THE DECRETUM OF GRATIAN (CONCORDIA DISCORDANTIUM CANONUM)

Gratian · 1140

In English

Our own English translation, made from Friedberg's edition of the Corpus Iuris Canonici (vol. I, the Decretum, Leipzig, 1879), with Friedberg's Latin beside it; under each canon its column in Friedberg, linked to the page image.

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Part I

CONCORDANCE OF DISCORDANT CANONS, AND FIRST, ON NATURAL AND POSITIVE LAW

Distinction I

GRATIAN. The human race is governed by two things, namely, natural law and customs. The law of nature is that which is contained in the Law and the Gospel, by which each person is commanded to do to another what he wishes to be done to himself, and is forbidden to inflict upon another what he would not wish to be done to himself. Hence Christ in the Gospel: "All things whatsoever you wish men to do to you, do you also the same to them. For this is the Law and the Prophets." Hence Isidore says in Book V of the *Etymologies* [c. 2]:

C. I. Divine laws stand by nature, human laws by customs.

All laws are either divine or human. Divine laws stand by nature, human laws by customs, and therefore these differ, since different laws please different nations. §1. *Fas* is divine law; *ius* is human law. To pass through another's field is permitted by divine law, but is not permitted by human law.

GRATIAN. From the words of this authority it is plainly given to be understood in what divine and human law differ from one another, since everything that is permitted by divine law is understood under the name of divine or natural law, while under the name of human law are understood customs committed and handed down in juridical writing. §1. *Ius*, moreover, is a general term containing many species under itself. Hence Isidore says in the same book [*Etymologies*, c. 3]:

C. II. *Ius* is the genus; *lex* is a species of it.

Ius is a general term; *lex*, however, is a species of *ius*. *Ius* is so called because it is just. All *ius*, moreover, consists of laws and customs.

C. III. What a law is.

[Isidore, same chapter 3.] A law is a written enactment.

C. IV. What custom is.

[Isidore, same chapter 3 and Book II, c. 10.] Custom is a longstanding usage, drawn solely from customary practices.

C. V. What customary usage is.

[Isidore, same chapter 3 and Book II, c. 10.] Customary usage is a certain law instituted by customs, which is received in place of law when law is lacking. §1. Nor does it matter whether it rests upon writing or upon reason, since reason also commends law. §2. Moreover, if law consists in reason, everything that rests upon reason will already be law, provided that it accords with religion, agrees with discipline, and conduces to salvation. §3. It is called customary usage because it is in common use.

GRATIAN. Therefore, when it is said, "it does not matter whether customary usage rests upon writing or upon reason," it appears that customary usage has in part been reduced to writing, and in part has been preserved only in the customs of those who use it. That which has been reduced to writing is called an enactment or law; that which has not been reduced to writing is called by the general name, namely, customary usage. §1. There is also another division of law, as Isidore attests in the same book [V, c. 4], saying thus:

C. VI. What the species of law are.

[Isidore, same chapter 4.] Law is either natural, civil, or of nations.

C. VII. What natural law is.

[Isidore, same chapter 4.] Natural law is common to all nations, because it is held everywhere by the instinct of nature, not by any enactment, such as the union of man and woman, the succession and upbringing of children, the common possession of all things and the one liberty of all, the acquisition of those things that are taken from the sky, the earth, and the sea; likewise the restoration of a thing deposited or of money entrusted, and the repelling of violence by force. §1. For this, or anything similar to it, is never held to be unjust, but natural and equitable.

C. VIII. What civil law is.

[Isidore, same chapter 5.] Civil law is that which each people or city establishes as its own for a divine or human reason.

C. IX. What the law of nations is.

[Isidore, same chapter 6.] The law of nations concerns the occupation of sites, building, fortification, wars, captivities, servitudes, rights of return, treaties of peace, truces, the religious obligation not to violate envoys, and marriages prohibited between foreigners. §1. This is accordingly called the law of nations, because almost all nations use this law.

C. X. What military law is.

[Isidore, same chapter 7.] Military law concerns the formalities of making war, the obligation of making a treaty, the advance against the enemy or the engagement when the signal has been given; likewise the retreat when the signal has been given; likewise the punishment of a military offense if a position is deserted; likewise the measure of stipends, the grades of dignities, and the honor of rewards, as when a crown or torque is bestowed; likewise the adjudication of booty, its just division according to the qualities and labors of persons, and the prince's share.

C. XI. What public law is.

[Isidore, same chapter 8.] Public law concerns sacred things, priests, and magistrates.

C. XII. What the law of the Quirites is.

[Isidore, same chapter 9.] The law of the Quirites belongs properly to the Romans, and none possess it except the Quirites, that is, the Romans. §1. It treats of lawful inheritances, curatorships,

guardianships, and acquisitions by prescription, which laws are found among no other people but are proper to the Romans and established for them alone.

Distinction II

GRATIAN. Part I. The law of the Quirites consists of statutes, plebiscites, senatorial decrees, enactments of princes, edicts, or the opinions of jurists.

C. I. What a statute is.

[Isidore, *Etymologies*, Book V, c. 10, and Book II, c. 10.] A statute is an enactment of the people by which the elders, together with the commons, sanctioned something.

C. II. What a plebiscite is.

[Isidore, same chapter 11.] Plebiscites are those things which the commons alone establish; and they are called plebiscites because the commons know them, or because they vote upon and request that they be done.

C. III. What a senatorial decree is.

[Isidore, same chapter 12.] A senatorial decree is that which the senators alone determine in taking counsel for the peoples.

C. IV. What an enactment or edict is.

[Isidore, same chapter 13.] An enactment or edict is that which a king or emperor establishes or publishes.

C. V. What the opinions of jurists are.

[Isidore, same chapter 14.] The opinions of jurists are those which legal experts are said to give in answer to those consulting them; whence the *Opinions of Paul* are so called. For there were certain learned men and arbiters of equity who published composed institutes of civil law by which they might quiet the disputes and contentions of those at variance.

C. VI. What tribunician or consular laws are.

[Isidore, same chapter 15.] Part II. Certain laws are also named after those who established them, as consular, tribunician, Julian, and Cornelian laws. For under Caesar Octavian, the suffect consuls Papius and Pompeius enacted a law that is called the Papian-Pompeian law from their names, containing rewards for fathers for begetting children. Under the same emperor, Falcidius, tribune of the commons, also made a law that no one should bequeath more by testament to strangers than would leave a fourth part for the heirs; from his name it is called the Falcidian law.

C. VII. What a *lex satura* is.

[Isidore, same chapter 16.] A *lex satura* is a law that speaks of several matters at the same time, named from the abundance of matters and, as it were, from fullness; whence to write satire is also to compose varied poems, as did Horace, Juvenal, and Persius.

C. VIII. What the Rhodian laws are.

[Isidore, same chapter 17.] The Rhodian laws concern maritime commerce and are named after the island of Rhodes, where in antiquity there was a practice of merchants.

Distinction III

GRATIAN. Part I. All these species are parts of secular laws. But since an enactment is either civil or ecclesiastical, and the civil enactment is called forensic or civil law, let us see by what name an ecclesiastical enactment is called. §1. An ecclesiastical enactment is designated by the name "canon." Isidore explains what a canon is in Book VI of the *Etymologies* [c. 16], saying:

C. I. What a canon is.

Canon in Greek is called *regula* in Latin.

C. II. Whence "rule" is so called.

[Isidore, same chapter 16.] A rule is so called because it directs rightly and never draws elsewhere. Others have said that a rule is so called either because it governs, or because it provides a norm of right living, or because it corrects what is distorted and depraved.

Part II. GRATIAN. Furthermore, some canons are decrees of pontiffs, while others are statutes of councils. Of councils, some are universal and others provincial. Of provincial councils, some are celebrated by the authority of the Roman Pontiff, namely with a legate of the holy Roman Church present; others, however, by the authority of the patriarchs, primates, or metropolitans of the same province. These things are to be understood concerning general rules. §1. There are also certain private laws, both ecclesiastical and secular, which are called privileges. Concerning these, Isidore says in Book V of the *Etymologies* [c. 18]:

C. III. What a privilege is.

Privileges are laws concerning private persons, as though private laws. For a privilege is so called because it is enacted concerning a private person.

Part III. GRATIAN. The function of secular or ecclesiastical laws is to command what it is necessary to do, to prohibit what it is evil to do, and to permit either lawful things, such as seeking a reward, or certain unlawful things, such as giving a bill of repudiation, lest worse things be done. Hence Isidore writes in the same book [c. 19], saying:

C. IV. What the function of laws is.

Every law either permits something, as: "Let a brave man seek a reward"; or forbids, as: "Let it be lawful for no one to seek marriage with consecrated virgins"; or punishes, as: "Let him who has committed a killing be punished capitally"—for human life is governed by its reward or punishment; or commands, as: "Love the Lord your God."

Distinction IV

GRATIAN. Part I. The reason for the establishment of laws is to restrain human audacity and to curb the capacity for doing harm, as Isidore attests in the same book [V, c. 20], saying:

C. I. Why laws were made.

Laws were made so that human audacity might be restrained by fear of them, innocence might be safe among the wicked, and the capacity for doing harm in the wicked themselves might be curbed through fear of punishment.

Part II. GRATIAN. Moreover, in the very establishment of laws, the quality of those to be established must especially be observed, so that they contain honorable character, justice, possibility, suitability, and the other qualities that Isidore enumerates in the same book [c. 21], saying:

C. II. What a law ought to be like.

A law shall be honorable, just, possible, according to nature, according to the custom of the country, suitable to place and time, necessary, useful, and also manifest, lest through obscurity it contain something unsuitable; written for no private advantage, but for the common utility of the citizens.

Part III. GRATIAN. These things must be considered in the very establishment of a law because, once laws have been established, it will not be free to judge concerning them, but it will be necessary to judge according to them. Hence Augustine says in the book *On True Religion* [c. 31]:

C. III. Laws are to be judged when they are established, not after they have been established.

In the case of these temporal laws, although men judge concerning them when they establish them, nevertheless, once they have been established and confirmed, it will not be lawful for a judge to judge concerning them, but according to them.

GRATIAN. Laws are established when they are promulgated; they are confirmed when they are approved by the customs of those who use them. For just as some laws today have been abrogated by the contrary customs of those who use them, so the laws themselves are confirmed by the customs of those who use them. Hence that decree of Pope Telesphorus—by which he decreed that clerics generally fast from meat and delicacies from Quinquagesima—because it was not approved by the customs of those who use it, does not accuse those acting otherwise as guilty of transgression.

C. IV. Clerics are to abstain from meat and delicacies for seven weeks before Easter.

Telesphorus, Archbishop of the city of Rome, to all bishops [sole epistle]. We establish that for seven weeks before holy Easter all clerics called to the lot of the Lord shall fast from meat; for just as the life of clerics ought to be distinguished from the manner of life of laymen, so a distinction ought also to be made in fasting. Therefore, during these seven weeks, let all clerics fast from meat and delicacies, and let them strive to cleave by day and night to hymns, vigils, and prayers.

C. V. Telesphorus adds a seventh week to Lent.

Likewise Ambrose, in the book of sermons. Lent has six weeks, to which the pontiff Telesphorus added a seventh week, and this period was called Quinquagesima.

GRATIAN. The same must be understood concerning that chapter which blessed Gregory [I] writes to Augustine, bishop of the English, saying:

C. VI. Those whom the dignity of ecclesiastical rank adorns are to undertake the resolve of fasting from Quinquagesima.

Finally, priests and deacons and the others whom the dignity of ecclesiastical rank adorns shall undertake the resolve of fasting from Quinquagesima, so that they may both add something to the measure of the holy institution and surpass the observance of those who remain in the lay order in religion just as they do in station. §1. We are, however, uncertain what is to be said concerning that very Sunday, since all laymen and secular persons on that day seek foods of meat more carefully and more than usual on other days, and unless with a certain novel greed they gorge themselves until midnight, they do not otherwise think themselves to undertake the observance of this sacred season. This is certainly to be ascribed not to reason but to pleasure, indeed to a certain blindness of mind, from which they cannot be turned away from such a custom. Therefore, they are to be left to their own disposition with pardon, lest perhaps they become worse if they are prohibited from such a custom. For, as Solomon says: "He who presses hard draws blood." And a little later. §2. It is fitting that on those days on which we abstain from the flesh of animals, we should also fast from everything that draws its origin from the seed-producing substance of flesh, namely milk, cheese, and eggs. And a little later. §3. Moreover, the eating of fish is left to a Christian in such a manner that it may provide him the solace of infirmity, not the kindling of luxury. Finally, he who abstains from meat is by no means to prepare more costly banquets of sea creatures. §4. We are also permitted to drink wine in such a manner that we altogether flee drunkenness; otherwise it remains that we should similarly do everything that pleases the body.

Part IV. GRATIAN. Although these things were established by laws, nevertheless, because they have not been approved by common usage, they do not accuse as guilty of transgression those who do not observe them. Otherwise, those not obeying these rules would be deprived of their own honor, since those who do not know how to obey the sacred canons are commanded to be entirely deprived of the office they have received—unless perhaps someone should say that these things were established not by decreeing but were written by exhorting. A decree creates necessity, whereas an exhortation arouses free will.

Distinction V

GRATIAN. Part I. These things that have been written concerning privileges and the other matters placed below agree with both secular and ecclesiastical laws. Let us now return to the difference between natural law and the others. §1. Natural law holds primacy among all laws both in time and in dignity. For it began from the origin of the rational creature, and it does not vary with time, but remains immutable. §2. But since natural law is said above to be comprehended in the Law and the Gospel, while certain things contrary to those established in the Law are now found to be permitted, natural law does not appear to remain immutable. For in the Law it was commanded "that if a

woman bore a male, she should abstain from entering the temple for forty days, but if a female, for eighty days"; now, however, she is not prohibited from entering a church immediately after childbirth. Likewise, a woman who was undergoing menstruation was accounted unclean under the Law; now, however, she is not prohibited either from entering a church or from receiving the mysteries of holy communion, just as neither the woman who gives birth nor that which is born is prohibited from being baptized immediately after childbirth. Hence Gregory [I] writes to the same Augustine, saying:

[C. I. PALEA.

You have learned from the precept of the Old Testament after how many days a woman who has given birth ought to enter a church: because she ought to abstain for thirty-three days for a male, but for sixty-six days for a female. It must nevertheless be known that this is understood mystically.]

C. II. A woman is not prohibited from entering a church to give thanks in the very hour in which she has given birth.

[Gregory, continuing in the same place.] If a woman enters a church to give thanks in the same hour in which she has given birth, she is burdened by no weight of sin; for the pleasure of the flesh, not its pain, is at fault. There is pleasure in the commingling of flesh, but groaning in the birth of offspring. Hence it is said to the first woman herself: "In pains you shall give birth." Therefore, if we prohibit a woman who has given birth from entering a church, we turn her very punishment into a fault.

C. III. Nothing prohibits a woman who has given birth, or that which has been born from her, from being baptized in the same hour.

Likewise. [The same to the same.] A woman who has given birth, or that which she has borne, is in no way prohibited from being baptized if danger of death presses, either in the very hour in which she gives birth or in that in which what is born is brought forth, lest, while time is still being sought to furnish the mystery of redemption, through the intervention of a slight delay there can no longer be found one who may be redeemed.

C. IV. A husband is not to approach intercourse with her before the child is weaned or the mother purified.

Likewise. [Gregory, continuing in the same place.] Her husband ought not to approach intercourse with her until the child who is born is weaned. [PALEA. A depraved custom has arisen in the conduct of married persons, however, whereby women disdain to nurse the children whom they bear and hand them over to other women to be nursed. This plainly appears to have been devised from the sole cause of incontinence, because while they are unwilling to contain themselves, they disdain to suckle those whom they bear.] But if, from depraved custom, they hand their children over to others to be nursed, they ought not to be joined to their husbands unless the period of purification has passed; indeed, even apart from the cause of childbirth, when they are detained in their customary menstruation they are prohibited from joining themselves to their husbands, so that the sacred Law strikes with death if any man approaches a menstruating woman. §1. Yet a woman cannot be prohibited from entering a church while she undergoes her customary menstruation, because an excess of nature ought not to be reckoned to her as a fault, and it is unjust that she be deprived of entry into a church on account of that which she suffers unwillingly. For we know that the woman

who suffered a flow of blood, humbly coming behind the Lord, touched the fringe of his garment, and immediately her infirmity departed from her. Therefore, if she who was placed in a flow of blood could laudably touch the Lord's garment, why should it not be lawful for a woman who suffers the menstruation of blood to enter a church? For if she did well to presume to touch the Lord's garment while placed in infirmity, why should what is granted to one infirm person not be granted to all women who are afflicted by the defect of their nature? §2. Nor ought she to be prohibited from receiving the mystery of holy communion on those days. If, however, from great reverence she does not presume to receive it, she is to be praised; but if she receives it, she is not to be judged. For it belongs to good minds to acknowledge their faults even where there is no fault, because often that which proceeds from fault is done without fault. Hence, even when we hunger, we eat without fault, though it came about from the fault of the first man that we hunger.

Distinction VI

GRATIAN. Since discussion has begun concerning an excess of nature, it is asked whether, after the illusion that is accustomed to occur through a dream, anyone may receive the body of the Lord, or, if he is a priest, celebrate the sacred mysteries. Concerning these matters blessed Gregory [I] writes thus to Augustine, bishop of the English [response 11]:

C. I. On the manifold kind of nocturnal illusion.

The testament of the Old Law calls such a man polluted unless he has been washed with water, and does not permit him to enter a church until evening. Yet the spiritual people, understanding this otherwise, regards as though deceived through a dream the man who, having been tempted by uncleanness, is defiled in thought by true images. But he is to be washed with water, so that he may wash away the fault of thought with tears, and unless the fire of temptation has first receded, he should know himself to be guilty as though until evening. §1. But in that same illusion a discernment is very necessary by which he ought subtly to weigh from what cause it happens to the mind of the sleeper. For pollution sometimes occurs from surfeit, sometimes from an excess or infirmity of his nature, and sometimes from thought. §2. And indeed, when it has arisen from an excess or infirmity of nature, this illusion is by no means to be feared, because the mind is rather to be grieved for having unknowingly suffered it than for having done it. §3. But when the appetite of gluttony is carried beyond measure in taking food, and the receptacles of the humors are consequently burdened, the mind has some guilt from this, yet not so much as to prohibit receiving the sacred mystery or celebrating the solemnities of Masses, when perhaps either a feast day requires it or necessity itself compels him to furnish the ministry because another priest is lacking. For if others are present who are able to fulfill the ministry, an illusion caused by surfeit ought not to prohibit the reception of the sacred mystery, but he ought, as I judge, humbly to abstain from the immolation of the sacred mystery—provided, however, that it did not shake the sleeper with a shameful image. For there are some in whom the illusion commonly arises in such a way that their mind, even while situated in the sleep of the body, is not defiled by shameful images. In this matter one thing is shown: the mind itself is guilty, though it was not then free in its judgment, because, although it remembers having seen nothing while in the body of the sleeper, it nevertheless remembers having fallen into gluttony during the body's waking. §4. But if the illusion in the mind of the sleeper arises from the shameful

thought of one awake, his guilt is evident to the mind. For he sees from what root that defilement proceeded, because what he knowingly thought, he unknowingly suffered. [PALEA.

C. II. A sin is not said to be perpetrated by thought alone, but by delight and consent.

But it must be considered whether the thought itself occurred in suggestion, in delight, or—which is greater—in consent to the sin. For every sin is completed in three ways, namely, by suggestion, delight, and consent: suggestion is made through the devil, delight through the flesh, and consent through the spirit; for first the serpent suggested the fault, Eve was delighted as the flesh, and Adam consented as the spirit. §1. And great discernment is necessary, so that the mind, as judge of itself, may preside between suggestion, delight, and consent. For when the malignant spirit suggests sin in the mind, if no delight in the sin follows, the sin has by no means been perpetrated; but when the flesh begins to be delighted, then the sin begins to be born; and if it also descends from deliberation into consent, then the sin is known to be completed. Therefore, in suggestion is the seed of sin, in delight nourishment is given, and in consent there is completion. §2. And it often happens that what the malignant spirit sows in thought, the flesh draws into delight, yet the mind does not consent to that delight. And although the flesh cannot be delighted without the soul, the mind itself, resisting the pleasures of the flesh, is nevertheless in some way unwillingly bound in carnal delight, so that it contradicts it by reason and does not consent, and yet is bound by delight, but groans vehemently that it is bound. Hence that foremost soldier of the heavenly army groaned, saying: "I see another law in my members fighting against the law of my mind and leading me captive in the law of sin that is in my members." But if he was captive, he did not fight back at all; therefore he was both captive and fought back. Thus the law that is in his members fought against the law of his mind; but if he fought back, he was not captive. Behold, therefore, the man is, so to speak, captive and free: free by the justice that he loves; captive by the delight that he unwillingly bears.]

C. III. When it is a sin to be deceived by nocturnal images.

Likewise Isidore in the book of *Sentences* [Book III, *Sentences on the Supreme Good*, c. 6, nos. 13–14]. It is not a sin when we are unwillingly deceived by nocturnal images; but it is then a sin if, before we are deceived, we are anticipated by inclinations of thought. For images of lust that we have enacted in reality often appear in the mind while we sleep, but they are harmless if they do not occur through concupiscence. §1. Likewise: He who is polluted by a nocturnal illusion, although apart from the recollection of shameful thoughts he perceives himself to be defiled, should nevertheless attribute it to his own fault that he was tempted, and should at once wipe away his uncleanness with tears.

GRATIAN. These matters are answered thus. Natural law is contained in the Law and the Gospel; nevertheless, not everything found in the Law and the Gospel is shown to belong to natural law. For in the Law some things are moral, such as "You shall not kill," and the rest; some are mystical, such as the precepts concerning sacrifices and other things similar to them. Moral commandments belong to natural law and are therefore shown to have received no mutability. Mystical commandments, according to the surface meaning, are shown to be foreign to natural law; according to their moral understanding, however, they are found to be joined to it. And by this, although they appear to have been changed according to the surface meaning, nevertheless according to their moral understanding they are shown to know no mutability. §1. Natural law, therefore, beginning from the origin of the

rational creature, as was said above, remains immovable. The law of custom, however, took its origin after natural law, from the time when men, coming together in one place, began to dwell together. This is believed to have occurred from the time when Cain is read to have built a city. Although this appears almost to have been extinguished in the flood because of the scarcity of men, afterward it is judged to have been restored, or rather altered, from the time of Nimrod, when he, together with others, began to oppress other men, and others through their weakness began to be subject to their dominion. Hence it is read concerning him: "Nimrod began to be a mighty hunter before the Lord," that is, an oppressor and destroyer of men, whom he enticed to build the tower.

Distinction VII

GRATIAN. Part I. Positive law began from the judgments that the Lord handed down to Moses, saying: "If you buy a Hebrew servant," etc. Hence Isidore says in Book V of the *Etymologies* [c. 1]:

C. I. On the founders of laws.

Moses, of the Hebrew people, first of all men set forth the divine laws in sacred writings. King Phoroneus first established laws and judgments for the Greeks. Mercury Trismegistus first handed down laws to the Egyptians. Solon first published laws for the Athenians. Lycurgus first devised laws for the Lacedaemonians by the authority of Apollo. Numa Pompilius, who succeeded Romulus in the kingdom, first published laws for the Romans. Then, when the people could not endure seditious magistrates, they created decemvirs to write the laws; these set out on twelve tables laws translated into Latin from the books of Solon.

C. II. The names of those who set out the laws of the Twelve Tables.

[Isidore, continuing in the same place.] These were Appius Claudius, Genucius, Sextius, Veturius, Julius, Manlius, Sulpicius, Curiatius, Romilius, and Postumius. These decemvirs were chosen to write the laws. The consul Pompey was the first who wished to undertake to arrange the laws in books, but he did not persevere because of fear of detractors. Caesar next began to do it, but was killed before it was done. Little by little the ancient laws became obsolete through age and neglect; although there is now no use of them, knowledge of them nevertheless appears necessary. New laws began with Caesar Constantine and the others succeeding him, and they were mixed and disordered. Afterward Theodosius the Younger, Augustus, made a code of enactments after the likeness of the Gregorian and Hermogenian Codes and arranged them from the times of Constantine under the title of each emperor; he called it Theodosian from his own name.

Distinction VIII

GRATIAN. Part I. Natural law also differs from custom and positive law. For by natural law all things are common to all, which is believed to have been observed not only among those concerning whom it is read, "The multitude of believers had one heart and one soul," etc., but is also found to have been handed down by philosophers from an earlier time. Hence in Plato that city is presented as most justly ordered in which no one knows his own private attachments. By the law of custom or positive law, however, this is mine and that belongs to another. Hence Augustine says upon John [Tractate VI on John 1, §25]:

C. I. By divine law all things are common to all; by positive law, however, this is mine and that belongs to another.

By what law do you defend the estates of the Church, divine or human? We have divine law in the divine Scriptures, human law in the laws of kings. Whence does each person possess what he possesses? Is it not by human law? For by divine law, "The earth is the Lord's and its fullness." God made the poor and the rich from one clay, and one earth supports the poor and the rich. Therefore, by human law it is said: "This estate is mine, this house is mine, this servant is mine." Human laws, moreover, are the laws of emperors. Why? Because God distributed those very human laws to the human race through the emperors and kings of the world.

Likewise. §1. Take away the laws of the emperor, and who dares to say: "This estate is mine, this servant is mine, this house is mine"? But if these things are held by men, the laws of kings made it so. Do you wish us to keep silent about the laws, so that you may rejoice? etc. Likewise. §2. Let the laws be read in which the emperors manifestly commanded that those who, apart from the communion of the Catholic Church, usurp for themselves the Christian name and are unwilling peacefully to worship the author of peace should dare to possess nothing in the name of a church. §3. But you say: "What have we to do with the emperor?" Yet, as I have already said, human law is at issue. The Apostle wished kings to be served, wished kings to be honored, and said: "Revere the king." Do not say, "What have I to do with the king?" What, then, have you to do with a possession? Possessions are possessed through the laws of kings. You have said, "What have I to do with the king?" Do not call the possessions yours, because you have renounced those very human laws by which possessions are possessed.

Part II. GRATIAN. In dignity, however, natural law simply prevails over custom and positive law. For whatever things have either been received by customs or comprehended in writings, if they are opposed to natural law, are to be held vain and void. Hence Augustine says in Book II [Book III of the *Confessions*, c. 8]:

C. II. No one is permitted to act against natural law.

Disgraceful acts that are contrary to human customs are to be avoided according to the diversity of customs, so that the compact of a nation among itself, confirmed either by a city's custom or by law, may not be violated by the lust of any citizen or foreigner. For every part that does not accord with its whole is shameful. §1. But when God commands something contrary to the custom or compact of any people, even if it was never done there, it is to be done; if it was omitted, it is to be restored; and if it was not established, it is to be established. §2. For if a king is permitted in the city over which he reigns to command something that neither anyone before him nor he himself had ever commanded, and obedience is not contrary to the society of his city—indeed, disobedience is contrary to that society, for it is a general compact of human society to obey its kings—how much more must God, ruler of all his creation, be served without hesitation in those things that he commands? For just as among the powers of human society a greater power is placed above a lesser for obedience, so God is placed above all.

C. III. An evil custom is to be uprooted entirely.

Likewise Pope Nicholas to Hincmar, archbishop of Rheims. An evil custom, no less than a pernicious corruption, is to be avoided. Unless it is very quickly uprooted entirely, it is assumed by the impious

as having the force of privileges, and transgressions and various presumptions, if not most swiftly suppressed, begin to be venerated as laws and perpetually observed in the manner of privileges.

C. IV. Custom is to be placed after truth and reason.

Likewise Augustine, Book II *On the One Baptism* [Book III *On Baptism, against the Donatists*, c. 6]. "When truth has been made manifest, let custom yield to truth": plainly, who would doubt that custom should yield to manifest truth? Likewise: "Let no one place custom before reason and truth, because reason and truth always exclude custom."

C. V. Every custom is to be placed after truth.

Likewise Gregory VII to Wimund, bishop of Aversa. If perhaps you oppose custom, it must be observed that the Lord says: "I am the truth." He did not say, "I am custom," but "the truth." §1. And certainly—to use the judgment of blessed Cyprian—every custom, however ancient, however widespread, is altogether to be placed after truth, and a usage that is contrary to truth is to be abolished.

C. VI. When truth has been revealed, custom ought to yield to it.

Likewise Augustine, in the book *On the Baptism of Infants* [Book III *On Baptism, against the Donatists*, c. 5]. He who, having despised truth, presumes to follow custom is either envious and malignant toward the brothers to whom truth is revealed, or ungrateful toward God, by whose inspiration his Church is instructed. For the Lord says in the Gospel: "I am," he says, "the truth"; he did not say, "I am custom." Therefore, when truth has been made manifest, let custom yield to truth. Thus, when revelation of truth has been made, let custom yield to truth, because Peter also, who was circumcising, yielded to Paul preaching the truth. Therefore, since Christ is the truth, we ought to follow truth rather than custom, because reason and truth always exclude custom.

C. VII. Custom is opposed to reason in vain.

The same, in Book IV *On Baptism* [against the Donatists, c. 5]. "In vain," he says, "do certain persons who are overcome by reason object custom to us, as though custom were greater than truth, or as though that which has been revealed as better by the Holy Spirit ought not to be followed in spiritual matters." This is plainly true, because reason and truth are to be placed before custom. But if truth supports custom, nothing ought to be retained more firmly.

C. VIII. Custom ought not to impede reason.

Likewise Cyprian [in the epistle to Pompeius against the epistle of Stephen]. A custom that had crept in among certain persons ought not to prevent truth from prevailing and conquering. For custom without truth is the antiquity of error; therefore, leaving error behind, let us follow truth, knowing that even in Esdras truth conquered, as it is written: "Truth is strong and grows strong forever, and lives and prevails for ages of ages."

The same [in the epistle to Jubaianus, around the middle]. One who errs in simplicity can be pardoned, as blessed Paul the Apostle says concerning himself: "I who formerly was a blasphemer and persecutor and injurious; but I obtained mercy because I acted ignorantly." But after inspiration and revelation have been given, he who perseveres in that in which he had erred no longer sins

knowingly and prudently under the pardon of ignorance; for he relies upon a certain presumption and obstinacy when he is overcome by reason.

C. IX. God's truth, not human custom, ought to be followed.

The same [Book II, epistle 3, to Caecilius]. If Christ alone is to be heard, we ought not to attend to what someone before us thought ought to be done, but to what Christ, who is before all, first did. For human custom ought not to be followed, but God's truth, since God speaks through the prophet Isaiah and says: "In vain do they worship me, teaching the commandments and doctrines of men."

GRATIAN. It is therefore clearly apparent that custom is placed after natural law.

Distinction IX

GRATIAN. Part I. That positive law yields to natural law is proved by manifold authority. For Augustine says to Boniface [the count, epistle 50]:

C. I. The laws of princes ought not to prevail over natural law.

[PALEA. When emperors establish evil laws for falsehood against truth, those believing rightly are tested and those persevering are crowned; but when they establish good laws for truth against falsehood, the raging are terrified and those who understand are corrected.] §1. Whoever is unwilling to obey the laws of emperors that are enacted for God's truth acquires a great punishment. Whoever, therefore, is unwilling to obey the laws of emperors that are enacted against the will of God acquires a great reward. [§2. For even in the times of the prophets, all kings who did not prohibit and overturn those things instituted among the people of God contrary to God's precepts are blamed, while those who prohibited and overturned them are praised above the merits of others. And King Nebuchadnezzar, when he was a servant of idols, established a sacrilegious law that an image should be adored; but those who refused to obey his impious enactment acted piously and faithfully. Yet the same king, corrected by a divine miracle, established for truth a pious and praiseworthy law that whoever uttered blasphemy against the God of Shadrach, Meshach, and Abednego should utterly perish together with his household.]

[PALEA.

C. II. Princes themselves are bound to live by their own laws.

Likewise from the words of Isidore, Book III of the *Sentences*, *On the Supreme Good*, c. 53. It is just for a prince to obey his own laws. For then may he consider his laws to be observed by all, when he himself also shows reverence for them. Princes are bound by their own laws, nor is it fitting that they can condemn in themselves the laws that they establish for their subjects. For the authority of their voice is just if they do not permit themselves what they prohibit to the peoples.]

C. III. The writings of commentators are subordinate to the canonical Scriptures.

The same, in the prologue to Book III *On the Trinity*. Part II. Do not be subservient to my writings as though to canonical Scriptures. Rather, in the latter, when you find even what you did not believe,

believe it without hesitation; but in the former, do not hold firmly even what you held as certain unless you understand it to be certain.

C. IV. Many things are found in the works of commentators that are to be corrected.

The same, to Vincentius, Book II [Book IV *On the Soul and Its Origin*, c. 1]. I cannot and ought not deny that, just as in the greater works themselves, so also in my many works there are many things that can be faulted by a just judgment and without rashness.

C. V. Falsehoods are not admitted in the canonical Scriptures.

The same, to Jerome, epistle VIII [XIX]. I have learned to render this fear and honor only to those books of the Scriptures that are now called canonical, so that I dare not believe that any of their authors erred in writing. And if I encounter in them anything that appears contrary to truth, I do not doubt that either the manuscript is faulty, or the translator did not grasp what was said, or I myself have understood it not at all. I read others, however, in such a way that, however much they excel in holiness and learning, I do not think something true merely because they themselves thought it so, but because they were able to persuade me, through other authors or canonical Scriptures or probable reasons, that it does not depart from truth.

C. VI. The Hebrew volumes impart authority to the books of the Old Testament, and the Greek to those of the New.

The same. Just as the fidelity of the books of the Old Testament is to be examined from the Hebrew volumes, so that of the New requires the norm of the Greek language.

C. VII. No authority will remain for the canonical Scriptures if falsehoods are admitted into them.

The same, in Epistle I to Jerome [epistle IX]. If even well-intentioned falsehoods are admitted into the holy Scriptures, what authority will remain in them? What judgment from those Scriptures will at last be pronounced whose weight may crush the wickedness of contentious falsehood?

C. VIII. Sacred Scripture is to be placed before the letters of all bishops.

The same, Book II *On the One Baptism* [likewise, *On Baptism against the Donatists*, Book II, c. 3]. Who does not know that holy canonical Scripture, both of the Old and the New Testament, is contained within its fixed limits, and that it is so placed before all later letters of bishops that it is altogether impossible to doubt and debate concerning it whether whatever is established as written in it is true or right? But letters of bishops that either were written or are written after the canon was confirmed may be reproved—by perhaps the wiser discourse of anyone more skilled in that matter, by the weightier authority and more learned prudence of other bishops, and by councils—if anything in them has perhaps deviated from truth.

C. IX. Calumnies against divine commandments are not to be gathered from the sayings of any bishops whatsoever.

The same, to Vincentius [epistle XLVIII, against the Donatists]. Brother, do not wish to gather calumnies against so many, so illustrious, and so indubitable divine testimonies from the writings of

bishops, whether of our own, such as Hilary, or of Cyprian and Agrippinus before the party of Donatus was separated; first, because this kind of writing is to be distinguished from the authority of the canon. For they are not read in such a way that testimony is brought forth from them as though it were unlawful to think contrary to them if anywhere they perhaps thought otherwise than truth requires. For we are in that number that does not disdain to accept as spoken also to us what was said by the Apostle: "And if in anything you think otherwise, this also God has revealed to you."

C. X. Equal reverence is not owed to the canonical Scriptures and to expositions of them.

The same, in the epistle to Fortunatus [likewise, to Fortunatianus, epistle III]. Nor ought we to hold the disputations of any persons whatsoever, although they are Catholic and praiseworthy men, as canonical Scriptures, in such a way that it is not lawful for us—while preserving the honor due to those men—to disapprove and reject something in their writings if perhaps we find that they thought otherwise than truth stands, whether understood by others or by us with divine assistance. Such as I am in regard to the writings of others, such do I wish the readers of mine to be.

C. XI. Sound reason is preferred to examples.

The same, to Casulanus [to Marcellinus, *The City of God*, Book I, c. 22, §2]. Sound reason is indeed to be placed even before examples. Examples also agree with it, but those examples are the more worthy of imitation to the extent that they are more excellent in piety.

GRATIAN. Since, therefore, nothing else is commanded by natural law than what God wills to be done, and nothing else is forbidden than what God prohibits from being done; finally, since nothing is found in canonical Scripture other than in the divine laws, while the divine laws stand by nature, it is clear that whatever things are shown to be contrary to the divine will or to canonical Scripture are also found to be opposed to natural law. Hence, whatever things are judged to be placed after the divine will, canonical Scripture, or divine laws, natural law must be preferred to those same things. Therefore, enactments, whether ecclesiastical or secular, if they are shown to be contrary to natural law, are to be entirely excluded.

Distinction X

GRATIAN. The enactments of princes do not take precedence over ecclesiastical enactments, but are subordinate to them. Hence Pope Nicholas writes to the bishops gathered at the council at Convicinum:

C. I. The law of emperors cannot dissolve ecclesiastical laws.

The law of emperors is not to be used in all ecclesiastical controversies, especially since it is found sometimes to oppose evangelical and canonical sanction. The same: The law of emperors is not above God's law, but beneath it. Ecclesiastical laws cannot be dissolved by an imperial judgment. §1. To demonstrate this, the testimonies of these two, namely Innocent and Gregory, are quite sufficient. Saint Innocent indeed says in his decretal epistle to Alexander, bishop of Antioch: "As to what you ask," he says, "whether, when provinces have been divided by an imperial judgment so that two metropolitan sees are created, two metropolitans ought to be named: it did not seem good to us for the Church of God to be changed according to the mutability of worldly necessities, or to suffer

honors or divisions that the emperor has seen fit to make for his own purposes." Blessed Gregory, writing to the patrician Theoctista, says among other things: "If it is said that the bonds of marriage ought to be dissolved for the sake of religion, it must be known that although human law has permitted this, divine law has nevertheless prohibited it." Behold how ecclesiastical laws cannot be dissolved by an imperial judgment. Behold how divine law prohibited what human law permitted. §2. We do not say that the laws of emperors—laws which the Church often uses against heretics and by which she is often defended against tyrants and all the depraved—are to be utterly rejected; rather, we assert that they cannot inflict prejudice upon evangelical, apostolic, and canonical decrees, after which they are to be placed.

C. II. It is lawful for an emperor to do nothing that opposes the rules of the Gospel.

Likewise Symmachus [pope], in the sixth synod [the Roman synod in the time of King Theodoric]. It is not lawful for an emperor, or for anyone guarding piety, to presume anything against the divine commandments, nor to do anything that opposes the evangelical, prophetic, or apostolic rules.

C. III. In ecclesiastical causes the royal will is not to be preferred to priests.

Likewise Pope Felix [III]. It is certain that this is salutary for your affairs: when matters of God are at issue, according to his own ordinance, you should strive to subject the royal will to Christ's priests, not prefer it; to learn sacred things through their prelates rather than teach them; to follow the form of the Church, not humanly to prescribe laws for it to follow, nor to wish to dominate its sanctions—the Church to whose clemency God willed the neck of your pious devotion to be submitted—lest, while the measure of the heavenly dispensation is exceeded, one proceed to the insult of him who orders it.

C. IV. Enactments cannot be contrary to the customs and decrees of the Roman Pontiffs.

Likewise. Enactments contrary to the canons and decrees of the Roman prelates, or to good customs, are of no force.

C. V. Kings are not permitted to usurp those things that belong to priests.

Likewise Pope Nicholas [I, in the epistle to Emperor Michael whose beginning is *We had proposed*]. Your empire ought to be content with its daily administrations of the commonwealth and not to usurp those things that pertain only to the Lord's priests.

C. VI. The tribunals of kings are subject to priestly power.

Likewise Gregory Nazianzen to the emperors at Constantinople [in the oration to the citizens of Nazianzus, full of anguish, and to the angry magistrate]. Do you accept freedom of speech? Do you willingly accept that the law of Christ subjects you to priestly power and places you beneath these tribunals? For he gave power also to us; he gave a principate far more perfect than your principates. Or does it seem just to you if spirit yields to flesh, if heavenly things are overcome by earthly things, if human things are preferred to divine?

Part II. GRATIAN. Behold that enactments of princes are to be placed after ecclesiastical laws. But where they do not oppose evangelical and canonical decrees, they are to be held worthy of every reverence. Hence Augustine says in the dialogue against Petilian [that is, Book II *Against the Letters of Petilian*, c. 58]:

C. VII. It is lawful to employ the laws of emperors in aid of the Church.

If you think that the laws of the earthly empire are to be employed in your aid, we do not reprove it. Paul did this when, against those treating him unjustly, he testified that he was a Roman citizen.

C. VIII. Kings need pontiffs for eternal life, and pontiffs need kings for temporal matters.

Likewise Cyprian to Julian [Pope Nicholas I, in epistle VII to Emperor Michael]. Since the one mediator of God and men is the man Jesus Christ, he distinguished the proper offices of both powers by their own acts and distinct dignities, wishing them to be raised upward by medicinal humility, not to be plunged back into the lower regions by human pride: so that Christian emperors should need pontiffs for eternal life, and pontiffs should use imperial laws only for the course of temporal affairs, in order that spiritual action might remain apart from carnal incursions, and that "one serving as God's soldier should by no means involve himself in secular affairs"; and, conversely, that he who was involved in secular affairs should not seem to preside over divine matters.

C. IX. The laws of emperors ought to be observed.

Likewise Leo IV to Lothair Augustus. Concerning the chapters or imperial precepts of you and of your pontifical predecessors that are to be inviolably guarded and preserved, we profess that, as far as we have been and are able, with Christ's favor we shall preserve them in every way both now and forever. And if perhaps anyone has told or will tell you otherwise, know with certainty that he is a liar.

C. X. What is done contrary to law is dissolved by the authority of law.

Likewise John VIII to Emperor Louis. You see, dearest son, that what is received contrary to the laws deserves to be dissolved through the laws.

C. XI. It is not fitting for the laws of princes and the rules of the fathers to be despised.

Likewise Gelasius to Bishops Rufinus and Aprilis. Who would say that the laws of princes, or the rules of the fathers, or paternal admonitions ought to be despised, except one who thinks that only his own offense will pass unpunished?

C. XII. The laws of the Roman princes are to be observed by all.

Likewise to King Theodoric. It is certain that your magnificence wills the laws of the Roman princes, which it has commanded to be observed in human affairs, to be observed much more concerning reverence for blessed Peter the Apostle, for the increase of its own felicity.

C. XIII. Roman law ought not to be corrupted by anyone's temerity.

Likewise Leo IV to Lothair Augustus. We implore your clemency that, just as until now Roman law has flourished without any storms and is remembered to have been corrupted for the sake of no human person, so now it may retain its proper strength and vigor.

Distinction XI

GRATIAN. Part I. That custom yields to laws is attested by Isidore in Book II of the *Synonyms* [c. 16]:

C. I. Depraved usage is to be overcome by reason and law.

Let usage yield to authority; let law and reason conquer depraved usage.

C. II. No one's custom can oppose the statutes of the pontiffs.

Likewise Pope Nicholas I to Emperor Michael. It follows that what is sanctioned with full authority by the rulers of this see is not to be removed through the obstructing occasion of any custom, by merely following private wills, but is to be held more firmly and unshakenly.

C. III. The members are not permitted to dissent from the custom of the Roman Church.

Likewise Pope Julius [I, to the eastern bishops, epistle I]. Do not err, my brothers; do not be led away by varied and foreign doctrines. You have the institutes of the Apostles and apostolic men and the canons; make use of these, so that, relying upon them, you may be able to stand against all the darts of enemies. For it is exceedingly unworthy for anyone among either the pontiffs or the orders following them to reject this rule, which he sees the see of blessed Peter both following and teaching. It is highly fitting that the whole body of the Church agree with itself in this observance, which has authority from the place where the Lord placed the primacy of the whole Church.

C. IV. Usage and custom cannot overcome law and reason.

Likewise, Book VII of the Code, title II [Emperor Constantine Augustus to Proculus, Book VIII of the Code, title *What Constitutes Long Custom*, title 53, enactment 2]. The authority of longstanding custom and usage is not slight; nevertheless, it will not prevail by its own weight to such a degree that it overcomes either reason or written law.

Part II. GRATIAN. But when custom is shown to oppose neither the sacred canons nor human laws, it is to be observed unshakenly. Hence Augustine, or one speaking from the sayings of Basil, says:

C. V. A custom that is shown to oppose neither human laws nor the sacred canons is inviolable.

Some ecclesiastical institutions we receive from writings, while others were confirmed by apostolic tradition through successors in ministry; still others were approved by usage strengthened by custom. To these an equal observance and the same affection of piety is owed in either case. Who, even if only slightly experienced in the sacred Scriptures, would hesitate concerning this? For if we attend to the customs of the Church handed down by the fathers apart from the Scriptures and reckon them as nothing, it will plainly be evident how much loss religion will suffer through those

who contemptuously disregard them. §1. For, to begin from there, what Scripture taught the faithful to be marked with the sign of the saving cross? Or what written form commended the words of the lengthy prayer or consecration, divided threefold over the bread and cup? For we say in secret not only what is contained in the Gospel or inserted by the Apostle, but we also add many other things that commend, as it were, a great force to the mysteries. What form of writing taught us to pray facing east? We bless the baptismal font and the oil of anointing. To this is added that we anoint those whom we baptize three times with oil and instruct them with words to renounce Satan and his angels. Whence are these and not a few other things of this kind, unless by a silent and mystical tradition from the fathers, observed in the ministries according to ecclesiastical custom and with more reverent diligence, published more by silence than by writing?

C. VI. A custom that usurps nothing contrary to the faith is praiseworthy.

The same, to the priest Casulanus. We praise a custom that is nevertheless known to usurp nothing contrary to the Catholic faith.

C. VII. Where authority is lacking, the custom of the people and the institutions of the elders are to be observed as law.

Likewise, to the same [blessed Augustine to Casulanus, epistle LXXXVI]. In those matters concerning which divine Scripture has established nothing certain, the custom of the people of God and the institutions of the elders are to be held as law. And just as transgressors of divine laws, so also contemners of ecclesiastical customs are to be restrained.

C. VIII. The Church is governed by authority and by general or special tradition.

The same, in the book *On the Christian Faith*. The Catholic Church, spread throughout the world, is shown to exist in three ways. Whatever is held in it is either the authority of the Scriptures, a universal tradition, or certainly a proper and particular instruction. But the whole Church is bound by authority, and no less the whole by the universal tradition of the elders; by private enactments and proper instructions, however, each church subsists and is governed according to the diversity of places, as has seemed good to each.

C. IX. The authority of the Catholic Church avails for faith.

The same, in the book against the Manichaeans. It is plain that in a doubtful matter the authority of the Catholic Church avails for faith, which is confirmed from the best-founded sees of the Apostles down to the present day by the succession of bishops succeeding one another and by the agreement of so many peoples.

C. X. It is not lawful to depart from apostolic institutions.

Likewise Leo [pope, to the bishops established throughout Sicily, epistle IV, c. 6]. We enjoin this upon your charity: that henceforth you depart from apostolic institutions by no transgression, because after this it cannot go unpunished if anyone believes that apostolic rules are to be neglected in any respect.

C. XI. What the Roman Church observes ought to be observed by all.

Likewise Innocent to Bishop Decentius [likewise Innocent I to Decentius, bishop of Gubbio, epistle I]. Who does not know or notice that what was handed down to the Roman Church by Peter, prince of the Apostles, and is guarded until now, ought to be observed by all, and that nothing should be added or introduced that ought to receive authority or an example from elsewhere? Especially since it is manifest that throughout all Italy, the Gauls, the Spains, Africa, Sicily, and the intervening islands, no one established churches except those whom the venerable Apostle Peter or his successors constituted priests. Let them read, however, whether another apostle is found or is read to have taught in these provinces. But if they do not read it, because they find it nowhere, they ought to follow what the Roman Church observes, from which it is not doubtful that they received their beginning, lest while they devote themselves to foreign teachings they appear to lose the head of their institutions. §1. It is not doubtful that your belovedness has often come to the City and met with us in the church, and has learned what custom it maintains either in consecrating the mysteries or in performing other sacred rites. I would judge this sufficient for the instruction or reformation of your church, if your predecessors maintained anything deficient or otherwise, and I would hold it entirely certain, had you not judged that we should be consulted concerning some matters. We therefore answer these things not because we believe that you are ignorant, but so that with greater authority you may either instruct your own people, or, if any depart from the institutions of the Roman Church, admonish them, or not delay to report them, so that we may be able to know who they are who either introduce novelties or think that the custom of a church other than the Roman Church is to be observed.

Distinction XII

GRATIAN. Part I. That it is lawful for no one to act without the discernment of justice. Hence Pope Callistus [I] to all bishops [says in Epistle I to Bishop Benedict]:

C. I. Without the discernment of justice, no one is permitted to act against the discipline of the Roman Church.

It is not fitting that the members dissent from the head, but, according to the testimony of Scripture, let all the members follow the head. It is doubtful to no one that the apostolic Church is the mother of all churches, from whose rules it is in no way fitting for you to deviate. And just as a son comes to do the will of his father, so also fulfill the will of your mother, which is the Church, whose head, as was said before, is the Roman Church. Therefore, whatever has been done without the discernment of justice against its discipline, no reason permits to be held ratified.

C. II. Let no one proudly resist apostolic precepts.

Likewise Gregory [Pope IV]. Let stubborn pride not resist apostolic precepts, but through obedience let those things that have been commanded by the holy Roman and apostolic authority be savingly fulfilled, if you desire to have communion with that same holy Church of God, which is your head. §1. By the present command we prescribe nothing new, but confirm those things that appear to have been granted long ago, since it is doubtful to no one that not only a pontifical case but every matter of holy religion ought to be referred to the apostolic see as to the head of the churches, and ought to take its norm from the place from which it took its beginning, lest the head of the institution appear

to be omitted. Let all priests who do not wish to be torn from the solidity of the apostolic rock upon which Christ founded the universal Church hold the sanction of this authority. If anyone has not observed these precepts of the apostolic see, let there be no doubt that he is an enemy of the honor he has received.

C. III. A custom to which canonical authority does not object is not to be resisted.

Likewise Nicholas to Emperor Michael [Leo IX to Michael, bishop of Constantinople, epistle I, c. 29, and Nicholas I, epistle II to Photius]. The holy Roman Church knows that diverse customs according to place and time in no way harm the salvation of believers, if canonical authority does not oppose them, on account of which we ought to oppose those customs; hence we judge that one neither ought nor is able to resist them.

C. IV. Customs that do not injure the faith are to be observed as they were handed down by the elders.

Likewise Jerome to Lucinus [epistle XXVIII]. I think you should briefly be admonished that ecclesiastical traditions, especially those that do not injure the faith, are to be observed as they were handed down by the elders, and that the custom of some is not to be overturned by the contrary custom of others.

C. V. Traditions instituted by the fathers are not to be broken.

Likewise Nicholas to Bishop Hincmar. It is ridiculous and a sufficiently abominable disgrace that we should suffer the traditions that we received from the fathers in antiquity to be broken.

C. VI. Longstanding customs are to be held as law.

Likewise Justinian, Book I of the *Constitutions*, title I [*Institutes*, Book I, title 2, *On Natural Law*, §9]. Longstanding customs, unless they are opposed to law, being approved by the consent of those who use them, imitate law.

C. VII. Whatever is done against longstanding custom ought to be revoked.

Likewise Book VIII of the Code, c. 52, title 2 [title 53, *What Constitutes Long Custom*, law 1]. Preceding custom and the reason that commended the custom are to be maintained. And the governor of the province shall recall to his own solicitude whatever is done against longstanding custom.

C. VIII. A custom that is known to usurp nothing contrary to the Catholic faith is to remain unmoved.

Likewise Gregory to all the bishops of Numidia [Book I, epistle LXXV]. We permit a custom that is known to usurp nothing contrary to the Catholic faith to remain unmoved, whether concerning the constituting of primates or concerning the other chapters, excepting those who pass from the Donatists to the episcopate. We prohibit in every way their promotion to the dignity of primate, even when their order carries them to the same place. Let it suffice for them to conduct the care of the people committed to them, but not to precede, in obtaining the summit of the primacy, those bishops whom the Catholic faith both instructed and begot in the bosom of the Church.

C. IX. Things belonging to custom are not to be denied.

Likewise Gregory [to Maximus, bishop of Salona, Book VII of the *Register*, epistle 81]. Just as we do not allow unlawful things to be perpetrated there, so we do not deny the things that belong to custom.

C. X. It is not place that commends a custom, but custom that commends a place.

Likewise to Augustine, bishop of the English [response to question 3]. Your fraternity knows the custom of the Roman Church, in which it remembers that it was nourished. But it pleases me that, whether in the Roman Church, or in that of the Gauls, or in any church, you have found something that can please almighty God more, you carefully choose it and, by a principal institution, infuse into the Church of the English, which is still new in the faith, those things that you have been able to gather from many churches. For things are not to be loved for the sake of places, but places for the sake of things. Therefore, choose from each several church the things that are pious, religious, and right, and, having gathered these as though into a bundle, establish them as a custom among the minds of the English.

C. XI. What is proved to be neither against faith nor against good morals is to be regarded as indifferent.

Likewise Augustine to Januarius [epistle CXVIII, cc. 1–2]. Those things that we guard not as written but as handed down, which indeed are observed throughout the whole world, are understood to be retained as commended and established either by the Apostles themselves or by plenary councils, whose authority in the Church is most salutary: such as the fact that the Lord's passion and resurrection and ascension into heaven, and the coming of the Holy Spirit, are celebrated by an anniversary solemnity; and if anything else of this kind occurs that is observed by the whole Church wherever it is spread. §1. Other things, however, vary throughout the regions and territories of the world, such as the fact that some fast on the Sabbath and others do not; others communicate daily in the body and blood of the Lord, while others receive on fixed days. And if anything else of this kind can be observed, this entire kind of matters admits free observances. For what is proved to be neither against faith nor against good morals is to be regarded as indifferent and observed according to the fellowship of those among whom one lives. My mother, having followed me to Milan, found a church that did not fast on the Sabbath; she had begun to waver as to what she should do. Then I consulted Bishop Ambrose of most blessed memory concerning this matter; but he said: "When I come to Rome, I fast on the Sabbath; when I am at Milan, I do not fast. So also you: to whatever church you may happen to come, observe its custom, if you do not wish to be a scandal to anyone or anyone to you." When I reported this to my mother, she willingly embraced it.

Part II. GRATIAN. This, however, is to be understood concerning that custom which is strengthened either by the usage of the universal Church or by length of time. But if varied customs are introduced according to the variety of times or minds, when an opportunity is found they are to be cut away rather than observed. Hence Augustine writes in response to the inquiries of Januarius [epistle CXIX, c. 19]:

C. XII. Things approved neither by authority nor by the customs of the universal Church are to be cut away.

All such things that are neither contained in the authorities of the holy Scriptures, nor found to have been established in councils of bishops, nor strengthened by the custom of the universal Church, but vary innumerably according to the diverse customs of diverse places, so that the causes which men followed in establishing them can scarcely or never at all be discovered—where the faculty is granted, I judge that they are to be cut away without any hesitation. For although it cannot be discovered how this is against faith, they nevertheless burden with servile loads the religion that the mercy of God willed to be free through the very few and most manifest sacraments of celebrations, so that the condition of the Jews is more tolerable; for although they did not recognize the time of liberty, they are nevertheless subjected to legal sacraments, not to human presumptions.

C. XIII. All provincials are to maintain in psalmody the same manner that they know the metropolitan see maintains.

Likewise from the Council of Toledo [XI, c. 3]. Part III. Concerning those who, contrary to the will of the Apostle, are carried about by every wind of doctrine, it pleased the holy council that, constrained by the authority of the metropolitan see, the citizens of each province and the rulers of the churches should maintain one and the same manner in psalmody that they know to have been instituted in the metropolitan see, and should not permit themselves to be separated from the metropolitan see by any diversity of any order or office. For it is just that each person take the rules of teaching from the place from which he receives the consecration of honor, so that according to the decrees of the elders the see that is the mother of each priestly dignity may be the teacher of ecclesiastical order. With the offices granted to abbots, which they are to fulfill regularly according to the will of their bishop, let it not be lawful for them to celebrate the other public offices, that is, vespers, matins, or Mass, otherwise than in the principal church. §1. Whoever shall have been a violator of these decrees, deprived of communion for six months, shall remain with the metropolitan to be corrected under the censure of penance, so that with him he may both wash away with tears the fault of his past transgression and diligently learn the necessary doctrine of the offices. §2. Therefore, under this rule of discipline, let not only the metropolitan bind the bishops or priests of his whole province, but let the other bishops also compel the rulers of churches subject to them to obey these institutions.

C. XIV. One and the same order is to be observed in the offices of matins and vespers.

Likewise from the Council of Braga [I, c. 1]. It pleased all by common consent that one and the same order of psalmody should be maintained in the offices of matins or vespers, and not diverse and private orders, nor should the customs of monasteries be mixed with the ecclesiastical rule.

Distinction XIII

GRATIAN. Part I. Likewise, no dispensation is admitted against natural law, unless perhaps two evils press in such a way that it is necessary to choose one of them. Hence it is read in the Eighth Council of Toledo [c. 2]:

C. I. The lesser of two evils is to be chosen.

Although two evils are to be guarded against with the utmost caution, nevertheless, if the necessity of danger has compelled one of them to be moderated, we ought to resolve upon that which is known to bind us with the lesser bond. Let us investigate with the acuteness of pure reason which of these is lighter and which graver. For when we are compelled to swear falsely, we indeed offend the Creator, but we stain only ourselves. But when we fulfill harmful promises, we both despise God's commands and harm our neighbors with impious cruelty, and we slaughter ourselves with the still more cruel sword of death. In the former case we are destroyed by the double weapon of faults; in the latter we are slain threefold.

C. II. On the same matter.

Likewise Gregory, in the *Moralia*, Part VI, Book XXXV, c. XIV [on Job 40, Book XXXII, cc. 17, 18, 19, and 20]. The sinews of Leviathan's testicles are entangled, because the devices of his suggestions are bound up in intricate contrivances, so that they cause many persons to sin in such a way that, if perhaps they desire to flee sin, they cannot escape it without another snare of sin, and they commit a fault while avoiding one, and are by no means able to free themselves from one unless they consent to bind themselves in another. We show this better if we bring forth from human conduct some examples of this entanglement. §1. Behold, while a certain person seeks the friendships of this world, he binds himself by an oath to another person leading a life similar to his own that he will conceal the latter's secrets with complete silence. But the one to whom the oath was sworn is discovered to be committing adultery, so that he even attempts to kill the adulteress's husband. The one who furnished the oath, however, returns to his senses and is assailed on either side by diverse thoughts: he fears to remain silent, lest by his silence he become a participant in both the adultery and the homicide; he trembles to disclose it, lest he bind himself with the guilt of perjury. He is therefore bound by the entangled sinews of the testicles, because in whichever direction he turns, he fears that he will not be free from the contagion of transgression. §2. Another, abandoning everything that belongs to the world and seeking to break his own wills in every respect, desires to subject himself to another's governance; but with insufficiently cautious inquiry he discerns the one who ought to preside over him toward God. For perhaps the man who is chosen without judgment, once he has begun to preside, prohibits the things that are of God and commands the things that are of the world. Thus the subject, weighing both what the fault of disobedience is and what the contagion of secular life is, trembles to obey and fears not to obey, lest either by obeying he abandon God in his commandments, or, again, by not obeying he despise God in the one whom he previously chose. §3. Another, neglecting to weigh the burden of ecclesiastical honor, ascends to a place of governance by payments. But because everything that is eminent here is afflicted more by sorrows than it rejoices in honors, while his heart is pressed by tribulation, his fault is recalled to memory; he grieves that he reached this labor with fault, and, broken by the very difficulty, recognizes how wicked was what he committed. Therefore, recognizing himself as guilty through the payments expended, he wishes to abandon the place of eminence he obtained, but fears that it would be a graver offense to have abandoned the guardianship of the flock he received; he wishes to exercise the care of the flock he received, but fears that it is a worse fault to possess a pastoral government that was purchased. Thus he sees himself bound on either side by fault through the ambition for honor. For he sees that neither course is without the guilt of crime: either the flock once received is abandoned, or a sacred action

purchased in worldly fashion is retained. He fears on every side and dreads every suspect direction, lest either, remaining unworthily in the governance he purchased, he lament what he does not amend by also abandoning it, or certainly, abandoning the governance while he strives to lament one thing, he commit another in turn through the very desertion of the flock.

Part II. §4. There is nevertheless something that may be subtly done to destroy the cunning devices of Behemoth: when the mind is constrained between lesser and greatest sins, if no approach whatsoever lies open without sin, the lesser are always to be chosen. For one who is enclosed on every side by the circuit of walls, lest he escape, casts himself into flight where the shorter wall confronts him. Hence Paul, when he saw certain incontinent persons in the Church, conceded the least things so that they might avoid the greater, saying: "Because of fornication, however, let each man have his own wife." And because spouses are without fault in intercourse only when they are joined not to fulfill lust but to receive offspring, in order to show that even what he had conceded was not without fault, though the fault was very slight, he immediately added: "I say this, however, according to indulgence, not according to command." For what is pardoned, not commanded, is not without vice. He certainly saw a sin that he foresaw could be indulged. But when we are constrained amid doubtful things, we are usefully subjected to the least, lest we sin in great things without pardon. §5. Thus the entanglement of this Behemoth's sinews is very often loosed when one passes to the greatest virtues through lesser offenses.

Distinction XIV

GRATIAN. Part I. But this is understood in one and the same person. It is deservedly asked, however, whether the same dispensation has a place in diverse persons—namely, that we commit lesser offenses lest others become entangled in graver ones. Augustine writes thus concerning these matters in the book *Questions on Genesis* [c. 42]:

C. I. No offenses are to be committed by us lest others commit graver ones.

As to what Lot said to the Sodomites: "I have two daughters who have not yet known men; I shall bring them out to you; use them as it pleases you, only do no wrong to these men": since he wished to prostitute his daughters by this compensation so that his male guests might suffer nothing of this kind from the Sodomites, it is deservedly asked whether a compensation of shameful acts or of any sins whatsoever is to be admitted, so that we may do some evil lest another do a graver evil; or whether it should rather be attributed not to Lot's counsel but to the disturbance of the man who said this. And certainly this compensation is admitted most dangerously. But if it is attributed to human disturbance and to a mind agitated by so great an evil, it is in no way to be imitated.

Part II. GRATIAN. The rigor of custom or positive law, however, is sometimes relaxed. Hence Pope Leo says [to Rusticus, bishop of Narbonne, epistle XC, before c. 1]:

C. II. Which enactments may be moderated, and which may not.

Just as there are certain things that can be overturned for no reason, so there are many things that ought to be moderated either because of the necessity of the times or from consideration of ages, with this condition always preserved: that in those things that are either doubtful or obscure, we

know that this is to be followed which is found neither contrary to evangelical precepts nor opposed to the decrees of the holy fathers.

Distinction XV

GRATIAN. Part I. Thus far we have discussed natural law and positive law or custom, assigning the difference by which they are distinguished from one another. Now let us turn the pen to ecclesiastical enactments, briefly assigning their origin and authority insofar as we are able to gather them from the books of the holy fathers.

C. I. At what time the canons of general councils began.

The canons of general councils—as Isidore says in Book VI of the *Etymologies*, c. 16—began from the times of Constantine. For in the preceding years, while persecution raged, no faculty at all was given for teaching the peoples. Hence Christianity was torn into diverse heresies, because bishops had no permission to assemble in one place until the time of the aforesaid emperor. For he gave Christians the faculty to gather freely. Under him also, the holy fathers, assembling from the whole world at the Council of Nicaea, handed down, according to the evangelical and apostolic faith, the creed second after that of the Apostles. §1. Among the other councils, four are venerable synods that principally embrace the whole faith, like the four Gospels or the same number of rivers of paradise. §2. The first of these, the Nicene synod of 318 bishops, was held while Constantine Augustus was emperor; in it the blasphemy of Arian unbelief, which Arius himself asserted concerning the inequality of the Holy Trinity, was condemned, and through a creed the same holy synod defined the Son of God as consubstantial with God the Father. §3. The second synod, of 150 fathers, was gathered at Constantinople under Theodosius the Elder. Condemning Macedonius, who denied that the Holy Spirit is God, it demonstrated that the Holy Spirit is consubstantial with the Father and the Son, giving the form of the creed that the whole confession of Greeks and Latins proclaims in the churches. §4. The third synod, the first at Ephesus, was promulgated by 200 bishops under Theodosius the Younger, Augustus. It condemned with a just anathema Nestorius, who asserted two persons in Christ, demonstrating that the one person of the Lord Jesus Christ remains in two natures. §5. The fourth synod, of Chalcedon, was held by 630 priests under the prince Marcian. In it, by one judgment of the fathers, it condemned Eutyches, abbot of Constantinople, who pronounced that there is one nature of the Word of God and the flesh; Dioscorus, his defender and former bishop of Alexandria; and, again, Bishop Nestorius himself together with the other heretics. The same synod proclaimed that Christ the Lord was born from the Virgin in such a way that in him we confess the substance of both the divine and the human nature. §6. These are the four principal synods, most fully proclaiming the nature of the faith. But if there are also any councils that the holy fathers, filled with the Spirit of God, sanctioned, they remain established with every force after the authorities of these four; their acts are set down and contained in this work. §7. *Synod* is interpreted from Greek as company or assembly. The name *council*, however, is drawn from Roman custom. For at the time when a cause was conducted, all assembled in one place and treated it with a common intention. Hence *concilium* is said from common intention, as though *consilium*; *consilium* as though *considium*, with the letter *d* passing into *l*. Or *concilium* is said from common intention because all direct the whole gaze of the mind toward one thing; for the eyebrows are the *supercilia* of the eyes. Hence those who disagree with one another do not conduct a council, because they do not think as one. An

assembly, moreover, is a meeting or gathering, from coming together, that is, from assembling in one place. Hence it is also called a meeting because men meet there. Just as a meeting is an assembly, so also a council is named from the association of many into one. Blessed Gregory also writes concerning the four councils, saying [Book I of the *Register*, epistle 24]:

C. II. On the authority of the four councils.

Just as I confess that I receive and venerate the four books of the holy Gospel, so also the four councils: namely the Nicene, in which the perverse dogma of Arius is destroyed; also the Constantinopolitan, in which the error of Eunomius and Macedonius is convicted; also the first Ephesian, in which the impiety of Nestorius is judged; and the Chalcedonian, in which the depravity of Eutyches and Dioscorus is rejected. I embrace these with complete devotion and guard them with the most entire approval, because in them, as upon a squared stone, the structure of the holy faith rises, and the norm of every life and action exists. §1. I also venerate the fifth council, in which the letter said to be that of Ibas, full of error, is rejected; Theodore is convicted of having fallen into the unbelief of impiety by separating the person of the mediator of God and men into two substances; and the writings of Theodore, through which the faith of blessed Cyril is reproved and which were brought forth with the boldness of madness, are refuted. All persons whom the aforesaid venerable councils reject, I reject; those whom they venerate, I embrace. For because they were established by universal consent, whoever presumes either to absolve those whom they bind or to bind those whom they absolve destroys himself and not them. Pope Gelasius also writes concerning the same matters [in the council held at Rome with seventy bishops], saying:

C. III. Which councils the holy Roman Church receives.

After those Scriptures of the Old and New Testaments that we regularly receive, the holy Roman Church also does not prohibit these from being received: the holy Nicene synod of 318 fathers, with Maximus Constantine Augustus acting as mediator, in which the heretic Arius was condemned; the holy Constantinopolitan synod, with Theodosius the Elder, Augustus, acting as mediator, in which the heretic Macedonius received his due condemnation; the holy first Ephesian synod, in which Nestorius was condemned with the consent of most blessed Pope Celestine, with Cyril, prelate of the see of Alexandria, and Bishop Arcadius, sent from Italy, acting as mediators; the holy Chalcedonian synod, with Marcian Augustus and Anatolius, bishop of Constantinople, acting as mediators, in which the Nestorian and Eutychian heresy, together with Dioscorus and his accomplices, was condemned. But if there are also any councils instituted thus far by the holy fathers, after the authority of these four we decree that they are both to be guarded and received. §1. It must now be added concerning the works of the holy fathers that are received in the Catholic Church. §2. The works of blessed Cyprian, martyr and bishop of Carthage. §3. Likewise the works of blessed Gregory Nazianzen, bishop. §4. Likewise the works of blessed Athanasius, bishop of Alexandria. §6. Likewise the works of blessed John, bishop of Constantinople. §9. Likewise the works of blessed Hilary, bishop of Poitiers. §10. Likewise the works of blessed Ambrose, bishop of Milan. §11. Likewise the works of blessed Augustine, bishop of Hippo. §12. Likewise the works of blessed Jerome, priest. §13. Likewise the works of blessed Prosper, a most religious man. §14. Likewise the epistle of blessed Pope Leo sent to Bishop Flavian; if anyone disputes its text down to one iota and does not reverently receive it in all things, let him be anathema. §15. Likewise we decree that the works and treatises of all

orthodox fathers who departed in no respect from the fellowship of the holy Roman Church, nor were separated from its faithful preaching, but by the grace of God were participants in its communion until the last day of their life, are to be read. §16. Likewise the decretal epistles that the most blessed popes gave at diverse times from the city of Rome for the consolation of diverse fathers are to be reverently received.

[PALEA. §17. Likewise the acts of the holy martyrs, who shine with the manifold torments of tortures and the marvelous triumphs of confessions. Who among Catholics doubts that this is so, that they suffered still greater things in their contests, and that they endured all things not by their own strength but by the grace and assistance of God? But according to ancient custom these are not read in the holy Roman Church without special caution, because the names of those who wrote them are utterly unknown, and because things superfluous, or less suited than the order of the matter was, are thought to have been written by unbelievers or unlearned persons—as with the passions of a certain Quiricus and Julitta, Gregory, and others of this kind, which are reported to have been written by heretics. For this reason, as was said, they are not read in the holy Roman Church, lest even a slight occasion for mockery arise. We nevertheless, together with the aforesaid Church, venerate with every devotion all the martyrs and their glorious contests, which are known to God more than to men. §18. Likewise we receive with every honor the lives of the fathers Paul, Antony, Hilarion, and all the hermits, provided that the most blessed man Jerome wrote them. §19. Likewise the acts of blessed Sylvester, prelate of the apostolic see: although we do not know the name of the one who wrote them, we nevertheless know that they are read by many Catholics in the city of Rome, and many churches imitate this from ancient usage. §20. Likewise the writings concerning the discovery of the Lord's holy cross and other writings concerning the discovery of the head of blessed John the Baptist are indeed recent revelations, and some Catholics read them; but when these come into the hands of Catholics, let the judgment of blessed Paul the Apostle precede: "Test all things; hold what is good." §21. Likewise Rufinus, a religious man, published very many books of ecclesiastical work and also translated some writings; but because blessed Jerome faulted him in certain things concerning freedom of choice, we think those things that we know the aforesaid blessed Jerome thought. This applies not only to Rufinus, but also to all whom the man so often remembered reproved out of zeal for God and the religion of the faith. §22. Likewise we receive as to be read certain works of Origen that the most blessed man Jerome does not reject; but we say that all the rest are to be refused together with their author. §23. Likewise the chronicle of Eusebius of Caesarea and the books of his *Ecclesiastical History*: although in the first book of his narrative he grew lukewarm, and afterward wrote one book in praise and excuse of the schismatic Origen, nevertheless, because of the singular knowledge of matters that pertain to instruction, we do not say that they are altogether to be refused. §24. Likewise we praise Orosius, a most learned man, because he arranged a history very necessary for us against the calumnies of the pagans and wove it together with marvelous brevity. §25. Likewise we bring forth with distinguished praise the venerable man Sedulius's paschal work, which he composed in heroic verses. §26. Likewise we do not despise but marvel at Juvencus's laborious work. §27. But the Catholic and apostolic Roman Church in no way receives things written or preached by heretics or schismatics. Of these we believe that a few which have come to memory and are to be avoided by Catholics should be added. §28. First, we confess that the synod of Rimini, gathered by Caesar Constantius, son of Constantine, with the prefect Taurus acting as mediator, was condemned from then, is now, and will be forever. §29. Likewise the itinerary in the name of Peter

the Apostle, which is called the eighth book of Saint Clement, is apocryphal. §30. The acts in the name of Andrew the Apostle, apocryphal. §31. The acts in the name of Philip the Apostle, apocryphal. §32. The acts in the name of Peter the Apostle, apocryphal. §33. The acts in the name of Thomas the Apostle, apocryphal. §34. The Gospel in the name of Thaddaeus, apocryphal. §35. The Gospel in the name of Thomas the Apostle, which the Manichaeans use, apocryphal. §36. The Gospel in the name of Barnabas, apocryphal. §37. The Gospel in the name of Bartholomew the Apostle, apocryphal. §35. The Gospel in the name of Andrew the Apostle, apocryphal. §39. The Gospels that Lucian falsified, apocryphal. §40. The Gospels that Hesychius falsified, apocryphal. §41. The book on the infancy of the Savior, apocryphal. §42. The book on the nativity of the Savior, on holy Mary, and on the midwife of the Savior, apocryphal. §43. The book that is called *The Shepherd*, apocryphal. §44. All the books that Leucius, disciple of the devil, made, apocryphal. §45. The book that is called *The Foundation*, apocryphal. §46. The book that is called *The Treasure*, apocryphal. §47. The book that is called *On the Daughters of Adam*, or *Genesis*, apocryphal. §48. The cento concerning Christ, joined together from Virgilian verses, apocryphal. §49. The book that is called *The Acts of Thecla and Paul the Apostle*, apocryphal. §50. The book that is called *Of Nepos*, apocryphal. §51. The book of proverbs written by heretics and marked with the name of Saint Xystus, apocryphal. §52. The revelation that is called that of Paul the Apostle, apocryphal. §53. The revelation that is called that of Thomas the Apostle, apocryphal. §54. The revelation that is called that of Stephen, apocryphal. §55. The book that is called *The Passing of Holy Mary*, apocryphal. §56. The book that is called *The Penance of Adam*, apocryphal. §57. The book in the name of Ogias the Giant, who is reported by heretics to have fought with a dragon after the flood, apocryphal. §58. The book that is called *The Testament of Jacob*, apocryphal. §59. The book that is called *The Penance of Origen*, apocryphal. §60. The book that is called *The Penance of Saint Cyprian*, apocryphal. §61. The book that is called *The Penance of Jannes and Mambres*, apocryphal. §62. The book that is called *The Lots of the Apostles*, apocryphal. §63. The book of Lusana, apocryphal. §64. The book of the canons of the Apostles, apocryphal. §65. The book *Physiologus*, which was written by heretics and marked beforehand with the name of blessed Ambrose, apocryphal. §66. The history of Eusebius Pamphilus, apocryphal. §67. The works of Tertullian or Africanus, apocryphal. §68. The works of Postumianus and Gallus, apocryphal. §69. The works of Montanus, Priscilla, and Maximilla, apocryphal. §70. All the works of Faustus the Manichaean, apocryphal. §71. The works of the other Clement of Alexandria, apocryphal. §72. The works of Cassian, priest of the Gauls, apocryphal. §73. The works of Victorinus of Poitiers, apocryphal. §74. The works of Faustus of Riez in Gaul, apocryphal. §75. The works of Frumentius, apocryphal. §76. The epistle of Jesus to King Abgar, apocryphal. §77. The Passion of George, apocryphal. §78. The Passion of Quiricus and Julitta, apocryphal. §79. The writing that is called *The Contradiction of Solomon*, apocryphal. §80. All amulets that were written not, as they pretend, by the art of angels, but rather by that of demons, apocryphal. §81. These and all things similar to them that Simon Magus, Nicolaus, Cerinthus, Marcion, Basilides, Ebion, also Paul of Samosata, Photinus, Bonosus, and those who fell away in a similar error; also Montanus with his most obscene followers; Apollinaris, Valentinus or Manichaeus, Faustus, Sabellius, Arius, Macedonius, Eunomius, Novatus, Sabbatius, Celestius, Donatus, Eustathius, Jovinian, Pelagius, Julian and Latiensis, Celestinus, Maximinus, Priscianus from Spain, Lampedius, Dioscorus, Eutyches, Peter and another Peter, of whom one defiled Alexandria and the other Antioch; Acacius of Constantinople with his associates; and also all the heresies that they and their disciples or schismatics taught or wrote, whose names are by no means retained—we

confess that these are not only rejected but even eliminated from the whole Roman and apostolic Church, and together with their authors and the followers of those authors condemned forever under the indissoluble bond of anathema. §82. Moreover, we have judged that it should be noted for the edification of the faithful which books are read by some in ecclesiastical offices throughout the cycle of the year—a rite that the apostolic Church does not reprove but follows. Some place the Pentateuch at Septuagesima until the fifteenth day before Easter; on the fifteenth day they place Jeremiah until the Supper of the Lord. At the Supper of the Lord they read three readings from the Lamentation of Jeremiah: "How the city sits alone," etc.; three from Saint Augustine's treatise on Psalm 54: "Hear my prayer, O God, and do not despise it"; and three from the Apostle, where he says in the epistle to the Corinthians: "When you come together into one place." The second reading begins thus: "Likewise also the cup after he had supped," etc. The third: "Concerning spiritual things, however, we do not wish you to be ignorant, brothers." On the Parasceve, three readings from the Lamentation of Jeremiah; three from Saint Augustine's treatise on Psalm 63: "Hear my prayer, O God, when I entreat"; and three from the Apostle, where he says in the epistle to the Hebrews: "Let us hasten to enter into that rest," etc. The second reading: "For every pontiff." The third: "Concerning whom our discourse is great." On Holy Saturday, three readings from the Lamentation of Jeremiah the prophet; three from Saint Augustine's treatise on the same Psalm 63: "Hear my prayer, O God, when I entreat"; and three from the Apostle, where he says in the epistle to the Hebrews: "Christ, standing by as pontiff of future good things." The second reading: "For where there is a testament." The third: "For the law, having a shadow of future good things." At the Lord's Easter, homilies pertaining to that day; during the week, homilies. On the octave of Easter they place the Acts of the Apostles, the canonical epistles, and the Apocalypse until the octave of Pentecost. On the octave of Pentecost they place the books of Kings and Chronicles until the Kalends of August. On the first Sunday of the month of August they place Solomon until the Kalends of September. On the first Sunday of September they place Job, Tobit, Esther, and Esdras until the Kalends of October. On the first Sunday of the month of October they place the book of Maccabees until the Kalends of November. On the first Sunday of the month of November they place Ezekiel, Daniel, and the minor prophets until the Kalends of December. On the first Sunday of the month of December they place Isaiah the prophet until the Nativity of the Lord. On the Nativity of the Lord they first read three readings from Isaiah. The first reading: "At the first time the land of Zebulun was lightened," etc. The second: "Be consoled, be consoled." The third: "Arise, arise." Then sermons or homilies pertaining to that day are read. On the feast of Saint Stephen, a homily concerning that day. On the feast of Saint John, likewise. On the feast of the Innocents, likewise. On the feast of Saint Sylvester, likewise. On the octave of the Lord's Nativity, a homily concerning that day. On the first Sunday after the Lord's Nativity they place the epistles of Paul until Septuagesima. On Epiphany, three readings from Isaiah. The first reading begins: "All who thirst." The second: "Arise, be illuminated, Jerusalem." The third: "Rejoicing, I shall rejoice in the Lord." Then sermons or homilies pertaining to that day are read.]

Distinction XVI

GRATIAN. Part I. The canons of the Apostles, which are said by some to have been translated by Clement, Roman Pontiff, are fifty. Isidore writes that these are not to be received but are reckoned among the apocrypha, saying:

C. I. The canons of the Apostles are rejected by apostolic authority.

The canons that are called those of the Apostles—whether because the apostolic see does not receive them, or because the holy fathers did not give their assent to them, since they are recognized as having been composed by heretics under the name of the Apostles—although useful things are found in them, nevertheless it is established that their enactments have been removed by canonical and apostolic authority and reckoned among the apocrypha.

Zephyrinus, however, writes to the bishops established throughout Sicily to the contrary [epistle I]:

C. II. The canons of the Apostles are to be received.

The Apostles prescribed sixty judgments together with very many other bishops and judged that they were to be observed.

C. III. Except for fifty chapters, the canons of the Apostles are reckoned among the apocrypha.

Likewise Pope Leo IX, against the letter of Abbot Nicetas. The fathers number Clement's book—that is, the itinerary of Peter the Apostle—and the canons of the Apostles among the apocrypha, except for fifty chapters that they decreed should be joined to the orthodox faith.

[C. IV. Likewise] the Sixth Synod, c. 2.

It pleased this holy synod that henceforth the eighty-five chapters of the canons of the Apostles should be confirmed and valid. The epistle of Isidore at the beginning of the canons. Isidore, servant of Christ, to his fellow servant the reader. §1. Because of their authority, we place before the other councils the canons that are called those of the Apostles, although they are called apocryphal by some, since very many receive them, and the holy fathers strengthened their judgments by synodal authority and placed them among the canonical constitutions. Likewise. §2. The first order, as was said before, is contained concerning the celebration of a council; and afterward an abridgment of the canons of the Apostles, and of the first apostolic decretals—that is, from Saint Clement down to Saint Sylvester—and of diverse councils is interposed, following its order. GRATIAN. Likewise, since Pope Adrian receives the Sixth Synod with all its canons, and since also the holy eight universal councils have been strengthened by the profession of the Roman Pontiff, while in the Seventh Synod, or in the Sixth Council, the canons of the Apostles were received and approved, it is evident that they are not to be reckoned among the apocrypha.

Pope Adrian writes to Patriarch Tarasius:

C. V. The Sixth Synod is strengthened by the authority of Adrian.

I receive the holy Sixth Synod with all its canons. GRATIAN. But it is doubted concerning it whether it composed canons; this is easily resolved from the fourth action of the Sixth Synod. For Peter, bishop of Nicomedia, says:

C. VI. The Sixth Synod composed canons.

I have a book containing the canons of the holy Sixth Synod. The patriarch said: §1. Some are scandalized through ignorance concerning these canons, saying: Did the Sixth Synod make canons? Let them therefore know that the holy Sixth Synod was gathered under Constantine against those

who said that there was one operation and one will in Christ; in it the holy fathers anathematized them as heretics and expounded the orthodox faith. Part II. §2. This synod was dissolved in the fourteenth year of Constantine. But after four or five years, the same holy fathers were gathered under Justinian, son of Constantine, and promulgated the aforesaid canons, concerning which let no one doubt. For the very same men who were in the synod under Constantine subscribed to these canons under Justinian. For it was necessary that a universal synod promulgate ecclesiastical canons. Likewise: §3. The holy Sixth Synod, after the definition against the Monothelites had been promulgated by it, Constantine the emperor, who had gathered it, having died not long afterward, and his son Justinian reigning in his place. §4. The same holy synod, divinely inspired, was gathered again at Constantinople in the fourth or fifth year and promulgated 102 canons for the correction of the Church. GRATIAN. From these things, therefore, it is gathered that the Sixth Synod was convened twice: first under Constantine, and it established no canons; second under his son Justinian, and it promulgated the aforesaid canons. Hence the holy fathers, gathered a second time in the same synod, said:

C. VII. The enactments of the Sixth Synod.

Since the holy and universal synods—the Fifth under Justinian Augustus and the Sixth under his father Constantine Augustus—while disputing most fully concerning the mystery of the faith, did not make canons, as the other four universal synods did, we therefore, assembling in this imperial city, have written sacred canons. Likewise: §1. It pleased this holy synod that henceforth the eighty-five chapters of the canons of the Apostles should be confirmed and valid. Likewise: §2. We also confirm the remaining canons and synods of the saints—that is, the Nicene, Ancyrene, Neocaesarean, Gangrene, Antiochene, Laodicean, Constantinopolitan, First Ephesian, Chalcedonian, Sardican, and Carthaginian—and the works of Theophilus, bishop of Alexandria and martyr; Gregory Trismegistus, bishop of Neocaesarea; Athanasius, bishop of Alexandria; Basil, bishop of Caesarea in Cappadocia; Gregory, bishop of Nyssa; Gregory the Theologian; Amphilochius, bishop of Iconium; Timothy, bishop of Alexandria; Germanus, bishop of Constantinople; Cyril, bishop of Alexandria; Cyprian, bishop of Carthage; and his synod.

C. VIII. The holy eight councils are strengthened by the authority of the Roman Pontiff.

Likewise, from the *Liber Diurnus*, the profession of the Roman Pontiff. I profess that I will preserve unmutilated down to one iota the holy eight universal councils—the first Nicene, the Constantinopolitan, the Ephesian, the Chalcedonian, the Fifth and the Sixth, the Constantinopolitan, likewise the Nicene, and also the Eighth Constantinopolitan—and hold them worthy of equal honor and veneration; that I will in every way follow and preach what they preached and established; and that I will condemn with mouth and heart whatsoever they condemned. Bede writes in the book *On Times* [c. 65] concerning the time at which the Sixth Synod, and the Second and the First, and the Fourth and the Fifth, were assembled, saying:

C. IX. On the times of the councils.

The Sixth Universal Synod was celebrated at Constantinople and written down in the Greek language, in the time of Pope Agatho, with the most pious prince Constantine carrying it out within his palace, and at the same time with the legates of the apostolic see and 150 bishops sitting. §1. The

First Universal Synod was gathered at Nicaea against Arius, of 318 fathers, in the time of Pope Julius, under the prince Constantine. §2. The Second, at Constantinople, of 150 fathers, against Macedonius and Eudoxius, in the time of Pope Damasus and the prince Gratian, when Nectarius was ordained bishop of that city. [§3. Missing.] §4. The Fourth, at Chalcedon, of 630 fathers, under Pope Leo, in the time of the prince Marcian, against Eutyches, prelate of the most wicked monks. §5. The Fifth, at Constantinople, in the time of Pope Julius, under the prince Justinian, against Theodore and all heretics.

[C. X.]

The First Synod, at Nicaea, of 318 fathers, was against Arius, an Alexandrian priest, who asserted three grades in the Trinity—the Father greater, the Son lesser, and the Holy Spirit a creature—in the time of the prince Constantine, Sylvester, Roman Pope, Macarius of Jerusalem, and Alexander of Alexandria. Having condemned that heresy, they established twenty canons, of which the aforesaid Bishop Alexander was especially the author. §1. The Second, at Constantinople, of 150 fathers, was against Macedonius, bishop of Constantinople, who denied that the Holy Spirit is God, in the time of the princes Gratian and Theodosius, Damasus, Roman Pope, Cyril of Jerusalem, and Nectarius of Alexandria. Having condemned the aforesaid heresy, they established three canons, of which blessed Nectarius, bishop of Constantinople, was especially the author. §2. The Third, at Ephesus, of 300 fathers, was against Nestorius, bishop of Constantinople, who said that the blessed Virgin Mary was the mother not of God but only of a man, so that he made one person of the flesh and another of the Deity, in the time of the younger emperor, the prince Theodosius, Celestine, Roman Pope, Juvenal, bishop of Constantinople, and Cyril of Alexandria. Against the blasphemies of Nestorius they wrote, with the same Saint Cyril as author, fifteen chapters anathematizing an equal number of chapters. §3. The Fourth, at Chalcedon, of 630 fathers, was against Eutyches, abbot of Constantinople, who asserted that Christ, after the assumption of humanity, did not exist from two natures, but that the divine nature alone remained in him, in the time of the prince Marcian, Leo, Roman Pope, Juvenal of Jerusalem, and Anatolius of Constantinople. Having condemned the aforesaid heresy, they established twenty-seven canons, of which the same Saint Anatolius, bishop of Constantinople, was especially the author. §4. The Fifth, at Constantinople, was against Theodore Mosophenus and all heretics; this Theodore said that the Word of God was one and Christ another, and denied that holy Mary the Virgin was the mother of God, in the time of the prince Justinian, Vigilius, Roman Pope, Domninus of Antioch, and Eutychius of Constantinople. They wrote fourteen chapters anathematizing the blasphemies of Theodore and his companions. §5. The Sixth, at Constantinople, of 150 fathers, was against Macarius, bishop of Antioch, and his companions, who with a false supposition asserted one will and operation in Christ, in the time of the prince Constantine, Agatho, Roman Pope, and Gregory of Constantinople. Having condemned the aforesaid heresy, they wrote in anathematizing nine chapters annexed within.

[C. XI.]

The first entry is that of the Synod of Ancyra, which is reported to have been before the Nicene but is placed afterward because of the latter's greater authority; in it eighteen fathers established twenty-four canons, of which Vitalis, bishop of Antioch, was especially the author. §1. The second is the Neocaesarean, which is read to have been after the Ancyrene and Antiochene; in it eighteen fathers

established fourteen canons, of which Vitalis of Salamis was especially the author. §2. The third is the Gangrene, which is read to have been after the Nicene; in it seventeen fathers established twenty canons because of certain ecclesiastical necessities, especially against Eustathius, who said that no one placed in the married state, nor any faithful person who did not renounce everything he possessed, had hope toward the Lord, and many other poisonous things that it would be lengthy to enumerate. §3. The fourth is the Sardican, in which sixty fathers established twenty-one canons, of which Hosius, bishop of Corduba, Vincent, bishop of Capua, Januarius of Benevento, and Calepodius of Naples, legates of the holy Roman Church, were especially the authors. §4. The fifth is the Antiochene, in which thirty fathers established twenty-five canons, of which Eusebius, bishop of Palestine, was especially the author. §5. The sixth is the Laodicean, in which twenty-two fathers established fifty-eight canons, of which Bishop Theodosius was especially the author. §6. The seventh is the Carthaginian, in which 208 fathers established thirty-three canons, of which Aurelius, bishop of Carthage, was especially the author. Saint Augustine, bishop of Hippo, is also read to have been in the same synod, in the time of Honorius Augustus. §7. The eighth is the African, under Theodosius the Younger, Augustus, in which 224 fathers recited and confirmed 105 canons that are read to have been written through diverse councils of the province of Africa in the time of Aurelius, bishop of Carthage. §8. The ninth is the Synod of Arles, in which 600 fathers established canons, of which Sylvester, bishop of the city of Rome, and Saint Maurinus, bishop of Arles, were especially the authors, in the time of Constantine Augustus, as some assert. §9. The tenth is likewise the Synod of Arles, in which nineteen fathers established canons, of which Caesarius, bishop of Arles, was especially the author. §10. The eleventh is likewise the Synod of Arles, in which eighteen fathers established canons. §11. The twelfth is likewise the Synod of Arles, at Vicus Ortensis, in which eleven fathers established canons, of which Saint Caesarius, bishop, was especially the author. §12. The thirteenth is likewise the Synod of Arles, in which nineteen fathers established canons, of which Sarpidius, bishop of Arles, was especially the author. §13. The fourteenth is the Synod of Orange, in which sixteen fathers established canons, of which Bishop Hilary was especially the author. §14. The fifteenth is the Synod of Epaon, in which twenty-six fathers established forty canons, of which Bishop Caesarius was especially the author. §15. The sixteenth is the Synod of Agde, in which thirty-three fathers established canons, of which Caesarius was especially the author. §16. The seventeenth is the Synod of Orléans, in which seventy-two fathers established canons, of which Aurelian, bishop of Arles, was especially the author. §17. The eighteenth is likewise the Synod of Orléans, in which thirty-one fathers established canons, of which Melanius, bishop of Rennes, was especially the author. §18. The nineteenth is likewise the Synod of Orléans, in which twenty-five fathers established canons, of which Saint Albinus, bishop of Angers, was especially the author. §19. The twentieth is the Synod of Auvergne, in which fifteen fathers established canons, of which Honoratus, bishop of Breut, was especially the author. §20. The twenty-first is the Synod of Mâcon, in which twenty-one fathers established canons, of which Priscus, bishop of Lyon, was especially the author. §21. The twenty-second is likewise the Synod of Mâcon, in which sixty-seven fathers established canons, of which the same Priscus, bishop of Lyon, was especially the author. §22. The twenty-third is the Synod of Lyon, in which seventeen fathers established canons, of which Philip, bishop of Vienne, was especially the author. §23. The twenty-fourth is likewise the Synod of Lyon, in which twenty fathers established canons, of which Priscus, bishop of Lyon, was especially the author. But the statement

above that the Nicene Synod established twenty canons appears contrary to what is found in the epistle of Athanasius. For Athanasius of Alexandria writes to Pope Mark, saying thus:

C. XII. The epistle of Athanasius requesting the chapters of the Council of Nicaea.

We desire that, through the present legates, we may merit to receive from the see of your holy Church, by your authority, the seventy Nicene chapters that I brought from the aforesaid synod, at the command of my lord Alexander, as the decrees of all the bishops, and that were burned by fire. Likewise: §1. In our presence seventy chapters were treated in the aforesaid synod: thirty were published by the Greeks in the Greek language, and thirty by the Latins, similarly published in the Latin language. But it seemed good to the 318 bishops filled with the Holy Spirit, and especially to the already-mentioned Alexander and the representatives of the apostolic see, that ten chapters should be joined together and inserted in other suitable places, and that, according to the form of the seventy disciples or of the languages of the whole world, there should be seventy chapters of so great and so excellent a council, which would instruct the whole world of Christians. GRATIAN. How, therefore, are only twenty chapters said to have been established in the Nicene Synod, when seventy chapters, as Athanasius writes, are shown to have been established in it? The answer to these things is thus: Some chapters of the Nicene Synod have passed out of use; only twenty are held in the Roman Church.

Hence Pope Stephen writes, saying to Liutbert, bishop of Mainz:

C. XIII. Only twenty chapters of the Council of Nicaea are held.

Only twenty chapters of the Nicene Synod are held in the holy Roman Church; but through what neglect the others disappeared is uncertain. Very many think that they were inserted into the Council of Antioch. The Council of Sardica also is received by the authority of Pope Nicholas. Hence the same pope writes to the clergy of Constantinople:

C. XIV. The Council of Sardica is received by apostolic authority.

As for your saying that you neither possess nor receive the Council of Sardica or the decretals of the holy fathers, the ability to believe you is not readily granted, especially since the Council of Sardica, which was held among you in your regions and which the whole Church receives—by what reasoning could it be fitting that this holy Church of Constantinople cast these things aside and, as has been said, did not receive them?

Distinction XVII

GRATIAN. Part I. It was shown above in whose time general councils were celebrated, and the authority of which of them excels the other authorities of the saints. The authority to gather councils, however, belongs to the apostolic see. Hence Pope Marcellus writes to Maxentius:

C. I. A synod ought not to be gathered without the authority of the Roman Pontiff.

You cannot regularly hold a synod of bishops without the authority of this holy see, although you may be able to gather certain bishops. [PALEA. Nor may you condemn any bishop who has appealed

to this apostolic see before a definitive sentence proceeds from here. For if secular persons use written appeals in public judgments, how much more is it permitted to priests to do these same things, who are over them? Of them it was said: "I have said: You are gods."]

C. II. A council that has not been supported by the authority of the Roman Church is not valid.

Likewise Pope Julius [I] to the eastern bishops. Your rule has no force and will not be able to have it, since neither was this council conducted by orthodox bishops nor was a legation of the Roman Church present; the canons command that councils ought not to be held without its authority. Nor is any council valid, nor will any council ever be valid, unless it has been supported by its authority.

C. III. Let no one usurp the things granted to the Roman Church.

Likewise Pope Damasus [I to Stephen, epistle IV]. Let no one who does not wish to be judged unworthy of ecclesiastical honor or a contemner presume, without its counsel, to usurp the things granted to this see.

C. IV. It is not permitted to any persons to gather a synod without the authority of the apostolic see.

Likewise Gregory. It was never permitted, nor will it be permitted, for a particular synod to be gathered; but whenever any doubt concerning a universal synod arises among certain persons, in order to receive an account of what they do not understand, either those who desire the salvation of their soul should come voluntarily to the apostolic see to receive an account, or, if perhaps—as it is written concerning such persons, "When the sinner has come into the depth of evils, he contemns"—they prove so obstinate and contumacious that they do not wish to be taught, it is necessary either that they be drawn in any way to salvation by those same apostolic sees, or, lest they be able to become the ruin of others, that they be suppressed by secular powers according to the canons.

C. V. What is celebrated without the authority of the apostolic see is not a council but a conventicle.

Likewise Pelagius [Pope II] to the bishops who assembled at the illicit summons of John of Constantinople [epistle I, c. 1]. We are instructed anew by many apostolic, canonical, and ecclesiastical rules that councils ought not to be celebrated without the judgment of the Roman Pontiff. §1. Therefore, as has already been said, what is rightly annulled is not a council but your conventicle or petty council, and whatever was done in it is held null and void. See to it also henceforth that you do not presume such things at anyone's urging, if you do not wish to lack communion with the apostolic see. §2. But if questions have arisen in any province, and the reasoning among the bishops of that province begins to disagree, and no agreement is reached among those who disagree, they are then to be referred to the greater see. And if they are not readily and justly determined there, they are to be judged canonically and justly where a synod has been regularly gathered. But the greater and more difficult questions, as the holy synod established and blessed custom requires, are always to be carried to the apostolic see.

C. VI. Provincial councils will lack weight without the presence of the Roman Pontiff.

Likewise Pope Symmachus. Councils of priests, decreed by ecclesiastical laws to be held yearly throughout the provinces, have lost their validity because they do not have the presence of the pope. Read, most senseless men, whether at any time anything was established in them apart from the sanction of the apostolic summit, and whether, if anything concerning greater affairs arose for consultation, it was not reserved to the judgment of the aforesaid see. Part II. GRATIAN. Hence also, when the authority of King Theodoric had commanded priests from diverse provinces to assemble in the city of Rome so that a holy council might judge concerning the things that were said by his adversaries to have been charged against the venerable Pope Symmachus, prelate of the apostolic see, the bishops of Liguria and Emilia, or of the Venetiae, represented that the very man who was said to be assailed ought to convene the synod. They knew that first the merit of Peter the Apostle, and then the authority of the venerable councils following upon the Lord's command, had handed down singular power in the churches to his see, and that the pontiff of the aforesaid see had not been subject to the judgment of inferiors. §1. To these things the most serene king, by God's inspiration, replied that it belonged to synodal judgment to prescribe what was to be followed in so great a matter, and that nothing concerning ecclesiastical affairs belonged to him beyond reverence. He also committed to the power of the pontiffs that, whether they wished to hear the proposed affair or did not wish to hear it, they should deliberate upon what they thought more useful, provided that peace was given to the Roman city by the provision of the venerable council. But the bishops sitting in the synod gathered by the authority of the same Symmachus said: "Let Pope Symmachus, prelate of the apostolic see, assailed by accusations of this kind, be immune and free insofar as regards men; we reserve his whole cause to the judgment of God." §2. "Concerning the clerics of the aforesaid pope, however, who departed from their bishop prematurely and contrary to the rules and made a schism, we decree that this be done: that by making satisfaction to their bishop they may obtain mercy and rejoice to be restored to ecclesiastical offices." §3. "Lawrence, bishop of the Church of Milan, subscribed to this our statute, in which we committed the whole cause to the judgment of God." Peter, bishop of the Church of Ravenna, subscribed with the same words, and after him sixty-five bishops. What concerned the clerics is recognized to have been done mercifully and by dispensation for the restoration of peace in the city. §4. This also is to be noted: that in this council and in another synod of Pope Symmachus, the bishop of Milan is read to have subscribed and responded before the bishop of Ravenna; from this it is also gathered that his see has precedence before the latter.

[C. VII.] For Gregory I says [Book VII of the *Register*, epistle 112]

To Syagrius, bishop of Autun: We decree that bishops, according to the time of their ordination, should observe their places, whether for sitting in council, for subscribing, or in any other matter, and should claim for themselves the prerogative of their own ranks. GRATIAN. But the time of ordination refers not to churches but to persons, as is plainly apparent from the custom of the cardinals of the holy Roman Church and of the bishops of each province.

Distinction XVIII

GRATIAN. Part I. Councils of bishops, therefore, as appears from the foregoing, are invalid for defining and establishing, but not for correcting. For councils of bishops are necessary for exhortation

and correction; although they do not have the force of establishing, they nevertheless have authority to impose and enjoin what has been established elsewhere and commanded to be observed generally or specially. [PALEA.

C. I. From the Council of Chalon, c. 6.

It pleased the council that, with the primacy of the metropolitan preserved, the other bishops should yield place one to another according to the time of their ordination.]

Hence Leo I [epistle LXXXII, c. 7] to Anastasius, bishop of Thessalonica:

C. II. Two meetings are to be celebrated by the bishops in each year.

Concerning episcopal councils, however, we enjoin nothing other than what the holy fathers beneficially ordained: namely, that two meetings should be held in each year, in which judgment is to be given concerning all complaints that are accustomed to arise among the diverse orders of the Church. And if perhaps among those very persons who preside there arises—which God forbid—a cause concerning greater sins that cannot be defined by a provincial examination, the metropolitan will take care to instruct your fraternity concerning the quality of the whole affair, so that if, even with the parties placed before you, the matter has not been quieted by your judgment, whatever it is may be transferred to our cognizance.

C. III. At what time councils of bishops are to be celebrated.

Likewise from the Council of Nicaea [c. 5]. Let a council be held once before the days of Lent, so that, all enmities, if there are any, having been cut away, a clean solemn offering may be made to God; but let the second be held around the time of autumn.

C. IV. An episcopal council is to be held twice a year for the correction of morals and the resolution of controversies.

Likewise from the Council of Antioch [c. 20]. For the sake of ecclesiastical causes and of resolving the controversies that exist, it seemed sufficient for a council of bishops to be held twice a year throughout the individual provinces: once, indeed, after the third week of the paschal solemnity, so that the council may be completed in the fourth week that follows—that is, at mid-Pentecost. Those who dwell in the larger cities—that is, the metropolitan cities—are to admonish their fellow provincial bishops. §1. The second council, however, is to be held on the Ides of October, which day is found among the Greeks to be the tenth of the month Hyperberetaeus. In these councils both priests and deacons ought to be present, as well as all, however many, who consider themselves injured, and they are to await the synodal judgment. Nor is it permitted for any persons to hold councils among themselves without the knowledge of the metropolitan bishops, to whom it is established that judgment concerning all causes has been entrusted.

C. V. Those who, when summoned to a synod, disdain to come accuse themselves.

Likewise from the Council of Laodicea [c. 40]. Bishops who have been summoned ought not to disdain a synod, but ought to attend and either teach or be taught those things that are useful for the

correction of the Church and of others; if they disdain it, they appear to accuse themselves, unless perhaps they are unable to go.

C. VI. Bishops who, when summoned to a council, refuse to come are to be reproved.

Likewise from the Council of Chalcedon [c. 19]. It has reached our ears that the established councils of bishops are by no means celebrated in the provinces. This is proved by the fact that many ecclesiastical matters that need correction are neglected. This holy synod therefore established, according to the rules of the fathers, that the bishops throughout the individual provinces should come together in one place twice a year, where the individual things that have arisen are to be corrected. §1. But bishops established in their cities who are unwilling to assemble—especially when they are in bodily health and are also free from all other pressing necessities and inexcusable affairs—may be reproved with the admonitions of fraternal charity.

C. VII. A metropolitan who neglects to celebrate a council at least once a year is to be subject to canonical penalties.

Likewise from the Seventh Synod [c. 6]. Part II. Since there is indeed a rule that says regular inquiries ought to be made twice a year throughout the individual provinces by an assembly of bishops, because of fatigues and so that those who are to be assembled may have a suitable time for making the journey, the holy fathers of the Sixth Synod defined that, every excuse being removed, they are by all means to be held once a year and the things that have been corrupted are to be corrected. We too therefore renew this canon; and if any prince is found to prohibit this, let him be deprived of communion. But if any of the metropolitans neglects to do this without necessity or force or some reasonable occasion, let him be subject to canonical penalties. Moreover, while a synod is being held concerning canonical and evangelical affairs, the assembled bishops ought to be engaged in meditation and solicitude for guarding the divine and life-giving commandments of the Lord. §1. Further, let the metropolitan not have license to demand any of the things that a bishop brings with him, whether a beast of burden or any kind of object. But if he is convicted of having done this, let him pay fourfold.

C. VIII. Priests are not to be compelled to bring sacerdotal *eulogiae* to a council.

Likewise Leo IV [to the bishops of Britain, c. 3]. Concerning *eulogiae* to be brought to sacred councils, we find nothing determined by our predecessors, but it is to be as it pleases each priest. For if it is established that blessings are to be brought at that time, perhaps they will attend synods less willingly and will object still more to coming. These, as I judge, are neither reasonably to be required nor, if brought voluntarily, to be refused.

C. IX. Without grave necessity, a bishop is not to delay going to a synod.

Likewise from the Fourth Council of Carthage [c. 21]. A bishop is not to delay going to a synod unless he is hindered by a sufficiently grave necessity, yet in such a way that he sends a legate in his own person, being prepared, with the truth of the faith preserved, to receive whatever the synod shall establish.

C. X. Those who, being burdened, cannot go to a synod are to send letters of excuse.

Likewise from the Fifth Council of Carthage [c. 10]. It pleased the council that, whenever a council is to be assembled, the bishops who are hindered neither by age, illness, nor another graver necessity should attend fittingly. §1. But if they cannot attend, they are to subscribe their excuses in writing; and unless they render an account of their impediment to their primate, they ought to be content with the communion of their own church.

[PALEA.

C. XI. Likewise from the Council of Tours [c. 2].

A bishop ought not to compel an abbot to go to a synod unless some reasonable cause exists.]

C. XII. Let one who showed contempt be excluded from communion.

Likewise from the Second Council of Arles [c. 19]. But if anyone has neglected to be present, or has believed that the assembly of the brothers should be abandoned before the council is dissolved, let him recognize himself as alienated from the communion of the brothers; nor may he be received unless he has been absolved in the following synod.

C. XIII. Until the next synod, one who, summoned by the metropolitan, disdained to be present at the synod without grave necessity is to abstain from communion.

Likewise from the Council of Agde [c. 35]. If a metropolitan bishop sends letters to his fellow provincial bishops in which he invites them either to the ordination of the supreme pontiff or to a synod, laying all things aside—except grave bodily illness and a royal command—let them not delay being present on the appointed day. But if they are absent, as the ancient authority of the canons commands, let them be deprived of the charity of the brothers and the communion of the Church until the next synod.

C. XIV. A bishop who, summoned by the metropolitan, disdains to come to a synod is to be deprived of communion.

Likewise from the Council of Tarragona [c. 6]. If any of the bishops, admonished by the metropolitan to come to a synod, disdains to come when no grave bodily necessity intervenes, as the statutes of the fathers sanctioned, let him be deprived until the future council of the communion of charity of all the bishops.

C. XV. Priests and deacons, and all who consider themselves injured, are to assemble at the metropolitan synod.

Likewise from the Council of Pope Martin. For the sake of ecclesiastical causes and the resolution of disputes, it pleased the council that a council should be held twice a year throughout the individual provinces, with the metropolitan bishop summoning all the provincial bishops, so that all priests and deacons, or those who consider themselves injured, may come to the council, in order that the causes examined in the council may be brought to a just judgment. And if any bishops, priests, or deacons are manifestly found in an offense, let them be excommunicated according to reason for as long as it

pleases the common consent to give judgment concerning them. But no bishop may hold his own councils among his own people, except those to whom metropolitan sees have been entrusted.

[PALEA.

C. XVI. Likewise from the Council of Bylon.

Every year a bishop is to hold a synod in his diocese composed of his clerics as well as abbots, and is to examine the other clerics and monks.] GRATIAN. But the individual bishops are to take care to make known to their churches the things that are established in councils. Hence in the Council of Toledo [XVI, c. 6]:

C. XVII. The individual bishops are to make known to their churches the things that are established in councils.

We decree that, while a council is being conducted in any province, each of the bishops should by his admonitions make no delay, within the space of six months, in gathering all the abbots, priests, deacons, and clerics, and also the whole assembly of the city over which he is recognized to preside, and also the entire people of his diocese, so that before them he may disclose most fully all the things known to have been enacted or defined in the council in that year. §1. But if anyone believes that these things are to be treated as of little account, let him remain punished everywhere by a sentence of excommunication for the course of two months.

Distinction XIX

GRATIAN. Part I. Concerning decretal epistles, however, it is asked whether they possess the force of authority, since they are not found in the body of the canons. Pope Nicholas writes thus concerning them to the archbishops and bishops established throughout Gaul:

C. I. Decretal epistles have the force of authority.

If by the decree of the Roman pontiffs the works of other expositors are approved or disapproved, so that what the apostolic see truly approved is held accepted today and what it rejected is held ineffective to this day, how much more ought the things that it itself wrote at diverse times for the Catholic faith, for sound doctrines, for the various and manifold necessities of the Church, and for the morals of the faithful to be preferred with every honor and to be reverently taken up by absolutely everyone in any appropriate circumstances, with discretion or dispensation as guide? Although some of you have written that those decretals of the ancient pontiffs are not written down in the whole body of the codex of canons, and therefore are not to be taken up among the canons, they themselves use them indiscriminately where they perceive them to support their intention, and only now declare that they have been accepted to a lesser degree for the diminution of the power of the apostolic see and as an argument for their own privileges. Likewise: §1. If they say that the decretal epistles of the ancient Roman pontiffs are not to be admitted because they are not found written in the codex of canons, then neither is any institution or writing of Saint Gregory, or of anyone else who was before him or is after him, to be received, because it is not found written in the codex of canons. Then let them erase from their books the teaching and sanctions of those men, which are venerated by every tongue, because they are not found written in the codex of canons. For what purpose do they occupy parchments after they are no longer held accepted? But why should we linger long, since we shall no

longer receive even the divine Scriptures themselves of the Old and New Testament if we say that those men are to be heard? For neither of these is found inserted in the codex of ecclesiastical canons. But those who are prepared to resist rather than to obey will reply, saying that among the canons there is found a chapter of Saint Pope Innocent, by whose authority it is taught that both Testaments are to be received by us, although neither of them is contained as a whole within those paternal canons. To them it must be asserted in response that if the Old and New Testaments are to be received, not because they are annexed as a whole to the codex of canons, but because a judgment of Saint Pope Innocent appears to have been delivered concerning their reception, it assuredly remains that the decretal epistles of the Roman pontiffs are to be received even if they are not joined to the codex of canons, since it is established that among those canons a single chapter of blessed Leo is intermingled, by which all decretal enactments of the apostolic see are commanded to be observed in such a way that, if anyone transgresses against them, he is to know that pardon is denied him. [PALEA. For he says in c. 10 of his decretals: "But lest there perhaps be anything that is believed to have been passed over by us, we command that all decretal enactments, both of Innocent of blessed memory and of all our predecessors, which were promulgated concerning ecclesiastical orders and the disciplines of the canons, be observed by your charity in such a way that, if anyone transgresses against them, he is to know that pardon is thereafter denied him."]

But by saying "all decretal enactments," he omitted none of the decretal enactments that he did not command to be observed. And again, by asserting "of all our predecessors," he excepted none of the Roman pontiffs who were before him, whose decretal enactments he did not command to be observed by all in such a way that, if anyone transgresses against them, he is to know that pardon is thereafter denied him. Thus it makes no difference whether all the decretal enactments of the apostolic see have or have not been intermingled among the canons of the councils, since all cannot be joined together in one body, and among them are those that assign firmness and their own force to those that are absent, especially since the synodal acts among which the canons themselves were established are not found in the codex of canons but are venerated by us with all due reverence. Moreover, Saint Gelasius, most eloquent in his decrees and most blessed pope, agrees with this most blessed Pope Leo, saying thus: "We decree that the decretal epistles that the most blessed popes gave at diverse times from the city of Rome in response to the consultation of diverse fathers are to be reverently received." In this it is to be noted that he did not say, "The decretal epistles that are found among the canons," or only, "that the modern pontiffs issued," but "that the most blessed popes gave at diverse times from the city of Rome." Moreover, in saying "at diverse times," the holy man comprehended even those times when the persecutions of the pagans were multiplying and only with the greatest difficulty permitted the causes of bishops to be carried to the apostolic see. The divine grace favoring us, by setting forth these things in this way we show that there is no difference between those decrees of the prelates of the apostolic see that are found in the body of the canons and those that, because of their multitude, are scarcely found throughout individual bodies of volumes; for we have proved that the eminent prelates—namely Leo and Gelasius—commanded that all decretal enactments of all their predecessors, and the decretal epistles that the most blessed popes gave at diverse times from the city of Rome, were to be reverently received and observed.

C. II. All sanctions of the apostolic see are to be observed irrefragably.

Likewise Pope Agatho to all bishops. All the sanctions of the apostolic see are to be accepted just as though they had been confirmed by the divine voice of Peter himself.

C. III. The yoke imposed by the holy see is to be endured, although it may seem unbearable.

Likewise from a capitulary of Emperor Charles. In memory of blessed Peter the Apostle, let us honor the holy Roman and apostolic see, so that, as it is for us the mother of priestly dignity, it ought to be the ecclesiastical teacher of reason. Therefore humility is to be maintained with gentleness; and although a yoke scarcely bearable is imposed by that holy see, nevertheless let us bear it and endure it with pious devotion. §1. But if—which is not fitting—anyone, whether he is a priest or a deacon, is accused, while contriving some disturbance and lying in wait for our ministry, of having brought a false epistle from the apostolic see, or something else that did not come from there, with faith preserved and humility toward the Apostolic intact, let it be in the bishop's power whether to cast him into prison or into another custody until he appeals to the apostolic sublimity by a letter or through suitable legates of his own party, so that it may deign to decide especially through its holy legation and to define what Roman law establishes concerning such persons, in order that this man may be corrected and a limit imposed upon others.

C. IV. Whatever the Roman Church establishes or ordains is to be observed by all.

Likewise Stephen V says. Indeed, because the holy Roman Church, over which Christ willed us to preside, has been placed as a mirror and example, whatever it establishes, whatever it ordains, is to be observed perpetually and irrefragably by all.

C. V. One who does not wish to obey apostolic precepts is to be excluded from pontifical offices.

Likewise Gregory [IV]. It is lawful for no one either to will or to be able to transgress the precepts of the apostolic see, nor the ministry of our disposition, which your charity ought to follow. Part II. §1. Therefore, let whoever has willed to oppose apostolic decrees be laid low by the grief of his own ruin; nor let him thereafter have a place among the priests, but let him be banished from the holy ministry. Let no one afterward have concern for his judgment, since it is not doubted by anyone that he has already been condemned by the holy and apostolic Church through his disobedience and presumption; for he to whom the discipline of the holy Church has been entrusted, who ought not only to have obeyed the commands of the holy Church placed over him but also to have made them known to others lest they pass them by, is to be cast down by the overthrow of the greater excommunication. And let one who was unwilling to obey apostolic precepts be excluded from divine and pontifical offices.

C. VI. Decretal epistles are numbered among the canonical Scriptures.

Likewise Augustine, *On Christian Doctrine*, Book II [c. 8]. Among the canonical Scriptures, the most diligent investigator of the divine Scriptures is to follow as much as possible the authority of the Catholic churches; among these indeed let there be those epistles that the apostolic sees possess and have merited to receive from it. §1. He will therefore maintain this measure in the canonical

Scriptures: he is to place those that are received by all churches before those that some do not accept. But among those that are not accepted by all, he is to place those that the more numerous and weightier churches accept before those that the fewer churches of lesser authority hold. §2. But if he finds that some are held by more churches and others by weightier churches—although this cannot be found—I nevertheless think that they are to be held of equal authority.

C. VII. Let one who withdraws from the solidity of Peter understand himself to be banished from the divine ministry.

Likewise Leo [Pope Leo I to the bishops of Vienne, epistle LXXXVII]. Our Lord Jesus Christ, Savior of the human race, instituted it thus: that the truth, which previously was contained in the proclamation of the law and the prophets, should go forth through the apostolic trumpet for the salvation of the whole world, as it is written: "Their sound has gone forth into all the earth, and their words to the ends of the world." But the Lord willed the sacrament of this office to pertain to the office of all the Apostles in such a way that he placed it principally in most blessed Peter, the chief of all the Apostles, so that from him, as from a certain head, his gifts might be diffused as into the whole body, and so that whoever had dared to withdraw from the solidity of Peter might understand himself to be banished from the divine mystery. For he willed that this man, assumed into the fellowship of indivisible unity, should be called what he himself was, saying: "You are Peter, and upon this rock I shall build my Church," so that the building of the eternal temple might, by the marvelous gift of God's grace, stand upon the solidity of Peter, strengthening his Church with this firmness so that neither human rashness could assail it nor the gates of hell prevail against it. But whoever attempts to break his power, by favoring his own desires and by not following what he received from the ancients, wills with exceedingly impious presumption to violate this most sacred firmness of that rock, built by the Lord, as we have said. GRATIAN. This, however, is to be understood concerning those sanctions or decretal epistles in which nothing is found contrary either to the decrees of the preceding fathers or to evangelical precepts. For Anastasius II, through favor toward Emperor Anastasius, decreed that those whom Acacius had ordained priests or Levites after the sentence pronounced against himself ought duly to perform the offices they had received, saying thus:

C. VIII. Let no share of injury touch one who is ordained by heretics already condemned.

[Anastasius II to Anastasius Augustus, epistle I, cc. 7 and 8.] According to the custom of the Catholic Church, let the most sacred heart of your serenity acknowledge that no share of injury from the name of Acacius touches any of those whom Acacius baptized, or whom he ordained as priests or Levites according to the canons, lest perhaps the grace of the sacrament handed down through an unrighteous man appear less firm. §1. For even if baptism—which God keep far from the Church—has been given either by an adulterer or by a thief, the gift reaches the recipient undefiled, because that voice which sounded through the dove excludes every stain of human pollution. This is declared when it is said: "This is he who baptizes in the Holy Spirit and fire." For if the rays of this visible sun, when they pass through the foulest places, are stained by no defilement from contact, much more is the power of him who made this visible sun constrained by no unworthiness of a minister. For although Judas was sacrilegious and a thief, whatever he did among the Apostles by virtue of the dignity entrusted to him—the benefits given through an unworthy man suffered no detriment from this, as the Lord himself declared with the clearest voice: "The scribes," he says, "and the Pharisees

sit upon the chair of Moses; do what they say, but do not do what they do, for they say and do not do." §2. Therefore, whatever any ministers in the Church appear to perform for the advancement of men by virtue of their office, all this is accomplished by the effect of divinity. Thus Paul, through whom Christ speaks, affirms: "I planted, Apollo watered, but God gave the increase. Therefore neither is he who plants anything, nor he who waters, but God who gives the increase." §3. Moreover, God does not ask who or of what sort the preacher is, but what he preaches, so that he confirms that even the envious preach Christ well; by this evil the devil himself was cast down, and yet he himself does not cease to preach this. Therefore this man also, whose name we say should be suppressed, by ministering good things badly harmed only himself. For the inviolable sacrament that was given to others through him obtained the perfection of its power. §4. This indeed is true generally, unless the curious suspicion of some should extend itself so far as to imagine that, after judgment was pronounced by Pope Felix, Acacius thereafter acted ineffectively in the sacraments that he usurped, and consequently that those who received the ministries handed down either in consecrations or in baptism ought to fear lest the benefits appear void. GRATIAN. Therefore, because he gave these rescripts illicitly and uncanonically, and contrary to the decrees of God, of his predecessors, and of his successors—as is proved by Felix and Gelasius, who excommunicated Acacius before Anastasius, and by Hormisdas, who, the third after Anastasius himself, afterward condemned the same Acacius—he is therefore rejected by the Roman Church and is read to have been struck by God in this manner:

C. IX. Anastasius, rejected by God, was struck by divine command.

Anastasius II, a Roman by nation, lived in the time of King Theodoric. At that time many clerics withdrew themselves from communion with him because, without a council of bishops or priests and clerics of the whole Catholic Church, he had communicated with a Thessalonian deacon named Photinus, who had communicated with Acacius; and because he secretly wished to recall Acacius and could not, he was struck by divine command. Hence also concerning Bishop Maximus it was established in the Synod of Constantinople [c. 6]:

C. X. Things done concerning undisciplined persons, or by them, are to be rendered void.

Because of the teaching of all his indiscipline, which arose at Constantinople, it was established that Maximus should not be thought to have been or now to be a bishop, nor should those ordained by him hold any grade of the clerical state; all things, namely, that were done concerning him or by him having been rendered void.

Distinction XX

GRATIAN. Part I. Decretal epistles, therefore, are equal in law to the canons of councils. But now it is asked concerning the expositors of sacred Scripture whether they are equal to them or are subject to them. For the more anyone relies upon reason, the greater the authority his words appear to have. But very many of the commentators, excelling others just as in a fuller grace of the Holy Spirit, so also in more extensive knowledge, are proved to have adhered more closely to reason. Hence, to some persons, the sayings of Augustine, Jerome, and other commentators appear to be preferred to the enactments of certain pontiffs. Part II. §1. But it is one thing to impose an end upon causes and

another to expound sacred Scriptures diligently. For defining affairs, not only knowledge but also power is necessary. Hence Christ, when about to say to Peter, "Whatever you bind upon earth shall be bound also in heaven," etc., first gave him the keys of the kingdom of heaven: in one giving him the knowledge of discerning between leprosy and leprosy, and in the other giving him the power of casting some persons out of the Church or receiving them. Therefore, since any affairs receive an end either in the absolution of the innocent or in the condemnation of offenders, while absolution or condemnation requires not only knowledge but also the power of those who preside, it is apparent that the commentators on the divine Scriptures, although they excel pontiffs in knowledge, nevertheless, because they have not attained the summit of their dignity, are placed before them in expositions of the sacred Scriptures, but in defining causes merit the second place after them. Hence Leo IV writes to the bishops of Britain:

C. I. The writings of others are not to be placed before the decrees of the Roman pontiffs.

It is not fitting for any persons to judge from the little books and commentaries of others and to abandon the canons of the holy councils or the rules of the decretals that are held among us together with the canons. We use all of these in ecclesiastical judgments, namely those of the Apostles, the Nicene, Ancyrene, Neocaesarean, Gangrene, Sardican, Carthaginian, and African councils, and with them the rules of the Roman prelates Sylvester, Siricius, Innocent, Zosimus, Celestine, Leo, Hilary, Gelasius, Hormisdas, and Gregory the Younger. These altogether are those both through which a bishop judges and through which bishops and clerics together are judged. For if an unusual affair of such a kind emerges or occurs that can by no means be settled through these, then the sayings of those whom you mentioned—Jerome, Augustine, Isidore, or the rest of the holy doctors like them—if they are found, are to be retained and promulgated magnanimously, or the matter is to be referred to the apostolic see. §1. For this reason I do not fear to proclaim more clearly and with a loud voice that one who is proved not to receive without distinction those statutes of the holy fathers that we have mentioned, which among us are entitled canons—whether he is a bishop, cleric, or layman—is proved neither to retain nor believe the Catholic and apostolic faith or the holy four Gospels usefully and efficaciously unto their effect.

C. II. Those who either do not possess or do not observe the decrees of the Roman pontiffs are to be reproved.

Likewise Pope Nicholas to the clergy of Constantinople. If you do not possess the decrees of the Roman pontiffs, you are to be accused of neglect and carelessness. But if you possess them and do not observe them, you are to be reproved and rebuked for rashness.

C. III. To whom recourse is to be had when the authority of sacred Scripture does not present itself.

Likewise Pope Innocent. Concerning causes for which no authority to loose and bind appears in the books of the Old Testament, the four Gospels, together with all the writings of the Apostles, let recourse not be had to the Greek divine writings. If it is not found in those either, lay your hand upon the Catholic histories of the Catholic Church written by Catholic doctors. If it is not found in those either, recall with discernment the examples of the saints. But if, after all these have been examined, the nature of this question is not clearly investigated, gather the elders of the province and question

them. For what is sought by more elders is found more readily. The Lord, the true promiser, also says: "If two or three of you agree upon earth in my name concerning any matter whatsoever that they ask, it shall be done for them by my Father."

Distinction XXI

GRATIAN. Part I. Ecclesiastical affairs, therefore, as was shown above, are settled by the decrees of the Roman pontiffs and the sacred canons of councils. But the ministers of the sacred canons and of the decrees of the pontiffs are the supreme pontiffs and, below them, the prelates and the remaining priests, whose institution was begun in the Old Testament and more fully completed in the New. §1. For the supreme pontiffs and the lesser priests were instituted by God through Moses, who at the Lord's command anointed Aaron as supreme pontiff and his sons as lesser priests. Afterward David, when he enlarged the ministries of the house of the Lord, instituted doorkeepers and singers. Further, Solomon discovered a certain method of exorcizing by which demons, when adjured, were driven from possessed bodies; those assigned to this office were called exorcists. Concerning them the Lord says in the Gospel: "If I cast out demons in Beelzebub, in whom do your sons"—the exorcists, namely—"cast them out?" Imitating all these things in the New Testament, the Church has her doorkeepers, whom we call ostiaries. In place of the singers she instituted readers together with singers. Exorcists, however, she received with their ancient name and their office remaining. In place of the sons of Aaron, all those administering the priesthood below the supreme pontiff were consecrated. §2. Among them a certain distinction was preserved, so that some are called simply "priests," some "archpriests," some "chorepiscopi," some "bishops," some "archbishops" or "metropolitans," some "primates," some "patriarchs," and some "supreme pontiffs." §3. The distinction among these was especially introduced by the gentiles, who called some of their flamines simply flamines, others archflamines, and others protoflamines. But the distinction simply between greater and lesser priests took its origin in the New Testament from Christ himself, who instituted the twelve Apostles as though greater priests and the seventy-two disciples as though lesser priests. He chose Peter as though to be supreme priest when, before all and for all, he bestowed upon him the keys of the kingdom of heaven, imposed upon him the name Peter from himself, the rock, testified that he had prayed specially for his faith, and added that he should confirm the others, saying: "I have prayed for you, Peter, that your faith may not fail; and you, once converted, confirm your brothers." Following this same form, the Apostles ordained bishops and priests in individual cities. Moreover, we read that Levites were ordained by the Apostles, of whom blessed Stephen was the greatest; in the course of time the Church established subdeacons and acolytes for herself. Blessed Isidore also writes concerning these things in Book VII of the *Etymologies*, c. 12, explaining their names and the causes of the names, saying thus:

C. I. From where the name of the ecclesiastical grades is taken.

We believe that the clergy and clerics are so called because Matthias, whom we read to have been the first ordained through the Apostles, was chosen by lot. For *kleros* in Greek is called *sors* or inheritance in Latin. Therefore they are called clerics because they are of the Lord's lot or because they have the Lord as their portion. Generally, however, all who serve in the Church of Christ are named clerics; their grades and names are these: ostiary, psalmist, reader, exorcist, acolyte, subdeacon, deacon, priest, bishop. §1. The order of bishops is fourfold: that is, in patriarchs, archbishops, metropolitans,

and bishops. §2. *Patriarch* is interpreted in the Greek language as highest of the fathers, because he holds the first—that is, the apostolic—place; and because he exercises the highest honor, he is designated by such a name, as the Roman, the Antiochene, and the Alexandrian. §3. An archbishop is so called by a Greek word because he is the highest of the bishops; for he holds the apostolic place and presides over both metropolitans and the other bishops. §4. Metropolitans, however, are called from the measure of cities; for they preside over the individual provinces, and the other priests are subject to their authority and teaching. Without them the remaining bishops are permitted to do nothing, for the solicitude of the whole province is committed to them. §5. All the orders designated above, however, are named by the one and same designation "bishops"; but certain ones use a particular name because of the distinction of powers that they individually received. §6. A patriarch is the prince of the fathers, for *archon* means prince; an archbishop is the prince of bishops; a metropolitan is named from the measure of cities. §7. The word *episcopate* is so called because one who is made a bishop superintends, namely by bearing care for his subjects; for *skopein* in Greek is called *intendĕre* in Latin. Bishops in Greek are interpreted as overseers in Latin; for the overseer is said to be one placed over the Church because he watches and observes the morals and life of the peoples placed below him. §8. A pontiff is the prince of priests, as though the way of those who follow. He is also named the supreme priest and the chief pontiff. For he makes priests and Levites; he disposes all ecclesiastical orders; he shows what each one ought to do. Before this, however, pontiffs were also kings. For this was the custom of the ancients: that a king should also be a priest and a pontiff. Hence the Roman emperors too were called pontiffs. §9. A seer is named from the force of the mind; the signification of the word is manifold, for sometimes it signifies a priest, sometimes a prophet, and sometimes a poet. §10. A prelate is called a priest from the fact that he stands before, for he is first in the order of the Church, so that he has no one above him. Or, in Latin, a priestly leader. §11. *Sacerdos*, moreover, has a name compounded from Greek and Latin, because it is "one giving a sacred thing"; for just as a king is so called from ruling, so a priest is so called from sacrificing, for he consecrates and sacrifices. The priests of the gentiles, however, were called *flamines*. They had upon the head a cap in which there was a short rod, having some wool above it. Because on account of the heat they could not bear this, they began to bind only a thread upon the head; for it was unlawful for them to walk with their heads entirely bare. Hence they were called *flamines* from the thread that they used, as though *filamines*. But on feast days, after putting aside the thread, they placed the cap upon the head because of the eminence of the priesthood. §12. *Presbyter* in Greek is interpreted "elder" in Latin. They are named presbyters not only on account of age or decrepit old age, but because of the honor and dignity that they received. Priests, moreover, are also called *sacerdotes* because they give a sacred thing, as bishops do. Although they are priests, they nevertheless do not have the summit of the pontificate, because they neither sign the forehead with chrism nor give the Paraclete Spirit, which the reading of the Acts of the Apostles demonstrates to be owed to bishops alone. Hence among the ancients bishops and priests were the same, because that name is one of dignity and not of age. §13. Levites are called from the name of their founder. For the Levites arose from Levi, and by them the ministries of the mystical sacrament were fulfilled in the temple of God. They are called deacons in Greek and ministers in Latin, because just as consecration is vested in the priest, so the dispensation of ministry is vested in the deacon. §14. *Hypodeacons* in Greek are those whom we call subdeacons; they are so called because they are subject to the precepts and offices of the Levites. For they themselves receive the offerings from the faithful in the temple of God and carry them to the Levites

to be placed upon the altars; among the Hebrews they are called Nathinaeans. §15. Readers are called from reading, and psalmists from singing psalms; for the former proclaim to the peoples what they are to follow, while the latter sing so that they may stir the minds of the hearers to compunction—although some readers pronounce so piteously that they compel certain persons to weeping and lamentation. They are also called pronouncers because they announce from afar. For their voice will be so great and so clear that they fill the ears even of those placed far away. §16. A singer, however, is so called because he modulates the voice in song. Two kinds of him are named in the art of music, as most learned men were able to say them in Latin: precentor and succentor; the precentor, namely, who sends the voice ahead in song, and the succentor, who responds by singing afterward. One is called a concentor because he sounds together; but one who does not sound together neither sings together nor will be a concentor. §17. Acolytes in Greek are called candle-bearers in Latin from carrying candles when the Gospel is to be read or the sacrifice offered. For then lights are kindled by them and carried, not to put darkness to flight while the sun gleams at the same time, but to demonstrate a sign of gladness, so that under the figure of bodily light that light may be shown concerning which it is read in the Gospel: "He was the true light who illuminates every man coming into this world." §18. Exorcists are called adjurers or rebukers when rendered from Greek into Latin, for over catechumens, or over those who have an unclean spirit, they invoke the name of the Lord Jesus, adjuring through him that it depart from them. §19. Ostiaries are the same as doorkeepers, who in the Old Testament were chosen for the guardianship of the temple so that no one unclean in any respect might enter it. They are called ostiaries because they preside over the doors of the temple. For they themselves, holding the key, guard all things within and without; and, having judgment between the good and the evil, they receive the faithful and reject unbelievers.

C. II. The Roman Church received the primacy from Christ.

Likewise Anacletus [to the bishops of Italy, epistle II]. In the New Testament, after Christ the Lord, the priestly order began from Peter, because the pontificate in the Church of Christ was first given to him, the Lord saying to him: "You are," he says, "Peter, and upon this rock I shall build my Church, and the gates of hell shall not prevail against it; and I shall give you the keys of the kingdom of heaven." He therefore first received from the Lord the power of binding and loosing and was the first to lead the people to the faith by the power of his preaching. But the other Apostles received honor and power together with him in an equal fellowship and willed him to be their prince; at the Lord's command, they too were dispersed throughout the whole world and preached the Gospel. §1. When they died, bishops arose in their place, whose ordination ought to be made according to the order and manner stated above. One who receives them and their words receives God; but one who spurns them spurns him by whom they were sent and whose embassy they discharge, and he himself will undoubtedly be spurned by the Lord. §2. Moreover, the Apostles themselves, seeing that the harvest was great and the laborers few, asked the Lord of the harvest to send laborers into his harvest. Hence seventy-two disciples were chosen by them; priests bear their figure and are established in their place in the Church.

C. III. No synod, but Christ, instituted the primacy of the Roman Church.

Likewise Gelasius, bishop of the city of Rome, to all the orthodox. Although all the Catholic churches throughout the world are one bridal chamber of Christ, nevertheless the holy Roman Catholic and

apostolic Church was placed before the other churches by no synodal enactments, but obtained the primacy by the evangelical voice of our Lord and Savior: "You are," says the Lord, "Peter, and upon this rock I shall build my Church." To him was also given the fellowship of most blessed Paul, the vessel of election, who—not at a different time, as the heretics prattle, but at one time, on one and the same day—contending in the city of Rome under Caesar Nero, was crowned with a glorious death together with Peter. They equally consecrated the aforesaid Roman Church to Christ the Lord and, by their presence and venerable triumph, placed it before all the cities in the whole world. The first see of the Apostle Peter, therefore, is the Roman Church, having neither spot nor wrinkle nor anything of this kind. Part III. GRATIAN. In all these, the more elevated the grade, the greater the authority is found. For in superiors there is the power of ruling and commanding; in inferiors, the necessity of obeying. Hence Pope Nicholas [I] writes to the bishop of Constantinople, saying:

C. IV. Inferiors are to be judged by superiors.

An inferior see cannot absolve a superior. For only a superior fittingly absolves an inferior. From this it is clearly discerned that an inferior cannot bind in judgment the superior whom it cannot absolve. Hence the Prophet says: "Shall the axe glory against him who cuts with it? Or shall the saw be exalted against him who draws it?" Having thus recalled these things from divine Scripture, we have shown more clearly than the sun that no one of lesser authority can consign to his own judgments, or subjugate to his own determinations, one who is of greater power.

C. V. On the same matter.

The same [in the same epistle]. Do not suppose that we wish to defend in any of our neighbors those things that are worthy of reproof, but that I wish sons to be so devoted and sober toward a spiritual father, and disciples toward a master, that with absolutely no rashness should they leap forward, I do not say to judge their life, but even to reprove it lightly.

C. VI. Inferiors can neither bless nor curse superiors.

Likewise Pope Nicholas [in the same epistle]. Finally, if we read in the epistle to the Hebrews that the lesser is blessed by the greater, it certainly remains that, when reason requires, he is also cursed by him. For those who were before us, foreknowing these perilous times, handed down a provident custom in the churches; and today it is preserved without omission in the Roman Church, which is the teacher of all churches, so that no priest, unless his fellow priest who is his superior has given the sign, attempts to give a blessing of any matter. But one standing before him to pronounce some reading indeed asks for a blessing, yet no inferior dares to bless him. Why is this? Is blessing a sin? Far from it. For the Apostle says of those who curse, not those who bless, "that they shall not possess the kingdom of God." But through this it is indicated by how great a bridle of censure all inferiors are to be restrained from judging their prelates, if they possess absolutely no right even to bless them.

C. VII.

The same to Emperor Michael. Now, however, by divine inspiration, it will neither weary us nor be impossible for us to show you—if only you wish to hear—that no one can rightly be subjected to judicial determinations by those who are of inferior dignity or order. For in the time of the Augusti Diocletian and Maximian, Marcellinus, bishop of the city of Rome, who afterward was made a

distinguished martyr, was so far compelled by the pagans that he entered their temple and placed grains of incense upon the coals. Because of this matter, when a council of numerous bishops had been gathered and an inquiry made, this same pontiff confessed that he had done it. Yet none of them dared pronounce sentence against him, while they all said to him repeatedly: "Judge your cause by your own mouth, not by our judgment." And again: "Do not be heard in our judgment, but gather your cause into your bosom." And again they say: "For from yourself you shall be justified, or from your mouth you shall be condemned." And again they say: "The first see shall be judged by no one." Likewise in the same epistle: §1. But also when certain persons at one time had attempted to charge certain things of evil report against Pope Xystus, and it had been said in a council at which Valentinian Augustus was present that it was not permitted to give sentence against the pontiff, the same emperor immediately arose and entrusted the judgment of his own case to the decision of the aforesaid pontiff. For no pontiff of lesser or inferior cities is found subjected to judgments.

C. VIII. Superiors cannot be judged by inferiors.

Likewise Nicholas [in the same epistle]. Ignatius is subjected to the deliberations of lesser, inferior, and subject persons, although the sacred canons command, and the examples of the holy fathers show, that one must always go where the greater authority is, and that in all controversies recourse is to be directed to the judgments of the superior see. It is established that this was observed not only by Catholics but even by the heretics themselves. Otherwise it is evident that a council is headless where a person of such importance is treated and the judgment of the superiors is not awaited, since even in the cause of clerics of an inferior grade the judgment of their bishop alone is not merely to be sought.

C. IX. The sentence of inferiors cannot condemn superiors.

The same to Emperor Michael. The holy fathers at Chalcedon so greatly detested this presumption that, among other things, they condemned Dioscorus, prelate of Alexandria, without any restoration especially for this reason: that, placing his mouth in heaven while his tongue passed over the earth, he dictated an excommunication against Saint Leo the pope. Thus, in the sentence pronounced against him, they appear to recall this especially, saying: "Because by his second transgressions he greatly surpassed his former iniquity; for he presumed even to dictate an excommunication against the most holy and blessed archbishop Leo of great Rome," etc. Is it read there that an inquiry was made whether Dioscorus had dictated that excommunication justly? Certainly not; but without any controversy they avenged this upon him because, although he was an inferior, he attempted to assail a superior with injuries of any kind, as Anatolius, prelate of Constantinople, testifies, saying: "Dioscorus was not condemned because of the faith, but because he made an excommunication against the lord Archbishop Leo."

Distinction XXII

GRATIAN. Part I. Since, therefore, a superior ought not to be judged by an inferior, it must be seen which church among the others holds the first place, which the second, and which the third. The Roman Church, as was said above, holds the first place among the others; the Church of Alexandria the second; and the Church of Antioch received from it the third place. Hence Pope Nicholas [II] writes to the Milanese:

C. I. The Roman Church obtained the primacy over the others.

The Roman Church instituted all patriarchs at the summit of any see, all primacies of metropolises, all episcopal chairs, or every dignity of churches of any order. But he alone founded her and raised her upon the rock of the faith just being born, who entrusted the rights of the earthly and at the same time the heavenly empire to the blessed key-bearer of eternal life. Therefore no earthly judgment whatsoever, but that Word by whom heaven and earth were constructed and by whom, finally, all the elements were created, founded the Roman Church. She certainly exercises his privilege and is supported by his authority. Hence there is no doubt that whoever detracts from the right of any church commits injustice. §1. But one who endeavors to take away the privilege of the Roman Church, handed down by the supreme head of all the churches himself, undoubtedly falls into heresy; and while the former is marked as unjust, this one is to be called a heretic. For one who acts against her who is the mother of the faith violates the faith, and is found contumacious toward him who is known to have placed her before all the churches. And below: §2. Hence Saint Ambrose himself also professes that in all things he follows the holy Roman Church as his teacher.

C. II. The Roman Church obtained the primacy not from the Apostles but from the Lord himself.

Likewise Anacletus, servant of Christ Jesus [to all bishops, epistle III, c. 3]. The sacrosanct Roman and apostolic Church obtained the primacy not from the Apostles but from our Lord and Savior himself, as he said to blessed Peter the Apostle: "You are Peter," and the rest down to: "loosed in heaven." §1. The fellowship of most blessed Paul the Apostle, the vessel of election, was added in that same city of Rome. On one day and at the same time he was crowned with a glorious death together with Peter; and both consecrated the holy Roman Church and placed her before all other cities in the whole world, both by their presence and by their venerable triumph. And although the continual prayer of all the saints is poured out before God for everyone, nevertheless in these words most blessed Paul promises the Romans in his own handwriting, saying: "For God is my witness, whom I serve in my spirit in the Gospel of his Son, that without interruption I always make remembrance of you in my prayers." §2. Therefore the first see by heavenly beneficence is the Roman Church, which, as has been recalled, most blessed Peter and Paul consecrated by their martyrdom. §3. The second see, however, at Alexandria, was consecrated in the name of blessed Peter by Mark, his disciple and evangelist. §4. The third see, at Antioch, is held honorable by reason of the same blessed Peter, because he held it there before he came to Rome and established Ignatius as bishop; and there the name of Christians first arose. And a little afterward: §5. Among the blessed Apostles there was a certain distinction; and afterward, although all were Apostles, it was nevertheless granted to Peter by the Lord—and they themselves willed this same thing among themselves—that he should preside over all the remaining Apostles and should hold the place of Cephas, that is, the head and beginning of the apostolate. They also handed down that this same form was to be maintained by their successors and by the other bishops. And this was established not only in the New Testament but also in the Old. Hence it is written: "Moses and Aaron among his priests," that is, they were the first among them. And a little afterward: §6. This apostolic see was established as the head and hinge, as was said before, by the Lord and not by another; and just as a door is governed by its hinge, so all the churches, by the Lord's ordering, are governed by the authority of this holy apostolic see.

GRATIAN. By this authority the Church of Alexandria is judged to have the second place after the first. But afterward, in the Synod of Constantinople, the Church of Constantinople received the second place after the apostolic see. Hence in the same synod [that is, Constantinople I, c. 5] it was established thus:

C. III. The bishop of Constantinople holds the place second after the Roman Pontiff.

The bishop of the city of Constantinople ought to have the honor of primacy after the bishop of Rome because it is new Rome.

C. IV. It is established that Constantinople is subject to the apostolic see.

Likewise Gregory to John, bishop of Syracuse [Book VII, epistle 63]. Concerning the Church of Constantinople, as to what they say, who doubts that it is subject to the apostolic see? Yet if it or another church possesses something good, I am prepared to imitate in good even my inferiors, whom I prohibit from illicit things. For foolish is one who considers himself first in such a way that he disdains to learn the good things he has seen. The same to the same [epistle 64]. For as to the fact that the primate of Byzantium says he subjects himself to the apostolic see, if any fault is found in bishops, I do not know who is not subject to it; but when fault does not require it, we are all equals according to the principle of humility.

C. V. The bishop of Constantinople is deposed by authority.

Likewise Gelasius [Pope Gelasius I to Faustus, master of the legation]. By what tradition of the elders do they call the apostolic see into judgment? Or ought the prelates of the second and third sees, and the other priests well conscious of their conduct, to have been driven out, while one who proved an enemy of religion ought not to have been driven out? Let them therefore see whether they have other canons by which they may carry out their follies. But these that are celebrated as sacred, ecclesiastical, and legitimate cannot call the apostolic see into judgment. Yet ought the bishop of the city of Constantinople—which assuredly received no name among the sees through the canons—not to have been removed when he fell back into the communion of the faithless?

C. VI. The Church of Constantinople holds the place second after the Roman Church.

Likewise from the Sixth Synod [c. 36]. Renewing the decrees of the holy Council of Constantinople, we ask that the see of Constantinople receive privileges similar to those that elder Rome possesses, yet that it not be magnified in ecclesiastical matters as the latter is; so that, existing second after it, it may be numbered before the see of Alexandria, then Antioch, and after it Jerusalem. GRATIAN. From this it is given to be understood that the Church of Alexandria was made third from second, and Antioch was made fourth from third—unless perhaps someone should contend that there are two second sees, so that he would have Constantinople and Alexandria hold a place equal in their dignity. Hence it is read in the Eighth Synod [canon 21]:

C. VII. Which of the patriarchal sees holds the first place and which the succeeding places.

We define that absolutely none of the powerful persons of the world is to dishonor any of those who preside over patriarchal sees or attempt to move him from his own throne: first, indeed, the most holy pope of elder Rome; afterward, the patriarch of Constantinople; then those of Alexandria, Antioch, and Jerusalem.

Distinction XXIII

GRATIAN. Part I. We have briefly shown what difference there is among ecclesiastical offices. Now, beginning from the highest and descending from these to the last grade, let us show by the authorities of the saints how each of them ought to be ordained.

C. I. Decree of Pope Nicholas concerning the election of the Roman Pontiff.

In the name of our Lord and Savior Jesus Christ. In the year 1059 from his Incarnation, in the month of April, in the twelfth indiction, with the sacrosanct Gospels set forth, and with the most reverend and blessed Pope Nicholas presiding in the basilica of the Lateran patriarchate that is surnamed the Constantinian, and with the most reverend bishops, abbots, priests, and deacons also sitting together, the same venerable pontiff, decreeing by apostolic authority concerning the election of the supreme pontiff, said: §1. Your blessedness knows, most beloved brothers and fellow bishops, and it has not escaped the lower members either, how many adversities this apostolic see, which by God's authorship I serve, endured after the death of our lord Stephen of pious memory, our predecessor; and finally how many times, through the money changers of the simoniacal heresy, it was subjected to repeated hammers and frequent blows, so that the pillar of the living God already appeared almost to waver and the net of the supreme fisherman was compelled, as the storms swelled, to sink into the depths of shipwreck. Hence, if it pleases your fraternity, with God's aid we ought prudently to meet future occurrences and provide for the ecclesiastical state hereafter, lest revived evils—which God forbid—prevail. §2. Therefore, instructed by the authority of our predecessors and of the other holy fathers, we decree and establish that, when the pontiff of this universal Roman Church dies, first the cardinal bishops, treating the matter together with the most diligent consideration, should soon summon the cardinal clerics to themselves; and thus the rest of the clergy and the people should approach to give consent to the new election, plainly taking care lest the disease of venality creep in on any occasion. Let the most religious men be the leaders in advancing the election of the pontiff, and let the rest be followers. §3. This order of election is recognized as certain and legitimate if, after the rules or acts of diverse fathers have been examined, that judgment of blessed Leo, our predecessor, is also recalled. "No reason," he says, "permits those to be held among the bishops who were neither elected by the clerics, sought by the peoples, nor consecrated by the fellow provincial bishops with the judgment of the metropolitan." Because the apostolic see is placed before all the churches throughout the world, and therefore cannot have a metropolitan over it, the cardinal bishops undoubtedly discharge the office of the metropolitan; they, namely, are to advance the elected prelate to the summit of the apostolic height. §4. Let him be chosen from the bosom of that Church itself if a suitable man is found; but if one is not found from it, let him be taken from another, with the due honor and reverence of our beloved son Henry preserved, who at present is held as king and,

God granting it, is hoped to be the future emperor, as we have already conceded to him and to those of his successors who personally obtain this right from this apostolic see. §5. But if the perversity of depraved and wicked men should grow so strong that a pure, sincere, and gratuitous election cannot take place in the city, let the cardinal bishops, together with religious clerics and Catholic laymen, although few, have the right and power to elect the pontiff of the apostolic see wherever it shall be fitting. §6. Clearly, after the election has been made, if the tempest of war or any endeavor of men through the zeal of malignity should resist so that the elected man cannot be enthroned in the apostolic see according to custom, nevertheless let the elect, as true pope, possess authority to govern the Roman Church and the faculty to dispose all its possessions; we know that blessed Gregory did this before his consecration. §7. But if anyone contrary to this our decree, promulgated by synodal judgment, shall have been elected or even ordained or enthroned through sedition, presumption, or any contrivance, by divine authority and that of the holy Apostles Peter and Paul, let him, together with his authors, supporters, and followers, be cast out, separated by perpetual anathema from the thresholds of the holy Church of God, as an antichrist, invader, and destroyer of all Christianity. Nor is any hearing concerning this ever to be reserved for him, but without reconsideration let him be deposed from every ecclesiastical grade, whatever he had previously been. Whoever adheres to him, displays reverence of any kind toward him as pontiff, or presumes to defend him in any respect is to be subjected to an equal sentence. §8. Whoever proves a violator of this our decretal sentence and attempts, contrary to this statute, to confound and disturb the Roman Church by his presumption, let him be condemned by perpetual anathema and excommunication and "be numbered with the impious who shall not rise in judgment"; let him feel against himself the wrath of the Almighty, and in this life and the future let him feel the fury of the holy Apostles Peter and Paul, whose Church he presumes to confound. "Let his habitation become desolate, and let there be no one who dwells in their tents. Let his sons become orphans and his wife a widow. Let him and his sons be moved and removed; let them beg and be cast out from their habitations. Let the moneylender search out all his substance, and let strangers plunder his labors. Let the globe of the earth fight against him, and let all the elements be contrary to him"; let the merits of all the saints at rest confound him and show open vengeance upon him in this life. §9. But may the grace of the Almighty protect the observers of this our decree, and may the authority of the blessed Apostles Peter and Paul absolve them from the bonds of all sins. Part II. GRATIAN. Let us show, from the authority of the Fourth Council of Carthage [c. 1], at which Augustine was present in the time of Honorius Augustus, how bishops and the others established in an order below them ought to be ordained, beginning with their examination:

C. II. How one who is elected as bishop is to be examined.

One who is to be ordained a bishop is first to be examined: whether he is prudent by nature; whether teachable; temperate in morals; chaste in life; sober; always cautious in his own affairs; humble; affable; merciful; literate; instructed in the law of the Lord; cautious in the meanings of the Scriptures; exercised in ecclesiastical doctrines; and, before all things, whether he asserts the teachings of the faith in simple words—that is, confirming that the Father and the Son and the Holy Spirit are one God, and preaching the whole deity of the Trinity as coessential, consubstantial, coeternal, and co-omnipotent; whether he confesses each individual person in the Trinity as fully God and all three persons together as one God; whether he believes that the divine incarnation was

effected neither in the Father nor in the Holy Spirit but in the Son alone, so that he who in divinity was the Son of God the Father should be true God from the Father and true man from his mother, having flesh from his mother's womb and a rational human soul; with both natures together in him, that is, God and man, one person, one Son, one Christ, one Lord, creator and author of all things that exist, Lord and ruler of all creatures together with the Father and the Holy Spirit; who suffered for our salvation by the true reception of his flesh and the true resumption of his soul, in which he is to come to judge the living and the dead. §1. It is also to be asked of him whether he believes that the one and same God is the author of the New and Old Testament—that is, of the law, the prophets, and the Apostles—and whether the devil was made evil not by creation but by choice. §2. It is also to be asked of him whether he believes in the resurrection of this flesh that we bear and not of another; whether he believes in the future judgment and that each will receive either punishments or rewards for the things that they did in this flesh; whether he does not prohibit marriages; does not condemn second marriages; does not censure the receiving of meats; communicates with penitents who have been reconciled; believes that in baptism all sins are forgiven, that is, both that original sin contracted and those voluntarily committed; and believes that no one is saved outside the Catholic Church. §3. When, having been examined in all these things, he has been found fully instructed, then, with the consent of the clerics and laymen and with the assembly of the bishops of the whole province, and especially with the authority or presence of the metropolitan, let him be ordained a bishop. Having received the episcopate in the name of Christ, let him acquiesce not in his own pleasure or his own morals, but in these definitions of the fathers.

C. III. Of what sort the manner of life of clerics ought to be.

Likewise Isidore, on the life of clerics. Part III. The law of the fathers therefore provides that they, separated from common life, should abstain from the pleasures of the world; should be present neither at spectacles nor at processions; should flee public banquets and cultivate private ones that are not only chaste but also sober; should by no means devote themselves to usury or to occupations of shameful profits; should not seek zealously after frauds against anyone; should flee the love of money as the material of all crimes; should refuse secular offices and affairs; should not receive grades of honor through ambition; should not accept gifts in return for the benefits of God's medicine; should beware of deceits and conspiracies; should flee hatred, rivalries, detraction, and envy; should walk neither with wandering eyes, an unbridled tongue, nor with wantonness and a dissolute gesture, but should show the modesty and shamefastness of the mind by simple dress and gait; should utterly abhor obscenity of members and words as they do that of deeds; should flee the frequent company of widows and virgins; should in no way seek the companionship of unrelated women; should strive to preserve perpetually the chastity of an inviolate body, or at least be joined by the bond of one marriage; should also furnish due obedience to elders and should not exalt themselves by any zeal for vainglory; finally, should devote themselves continually to readings of doctrine, psalms, hymns, songs, and constant exercise. For those who strive to bind themselves to divine worship ought to be such, namely so that, while they devote labor to knowledge, they may administer the grace of doctrine to the peoples.

C. IV. Those who cannot worthily handle the sacraments are not to be chosen for the divine ministry.

Likewise Clement [to James, the brother of the Lord, epistle II]. Let such clerics be chosen for the ministry as can worthily handle the Lord's sacraments. For it is better for a priest of the Lord to have a few ministers who can worthily perform the work of God than many useless ones who bring a heavy burden upon the ordainer.

C. V. If any charges are brought against one elected as bishop, five or six bishops are to come for his purgation.

Likewise from the Fourth Council of Carthage. This is to be established: when we assemble to elect a bishop, if any contradiction has arisen—as such things have occurred among us—let only three not presume to purge the one who is to be ordained, but let two or three be requested in addition to the aforesaid number; and among that same people for whom he is to be ordained, let the persons of those contradicting first be examined, and finally let the things that are charged also be discussed; and when he has been purged in public view, only then let him be ordained. If this agrees with the mind of your holiness, let it be confirmed by the response of your dignity. It was said by all the bishops: "It pleases us sufficiently."

C. VI. Those whom ecclesiastical discipline promotes are to pledge the vows of their promise.

Likewise from the Eleventh Council of Toledo [c. 10]. Although all who are bound to sacred orders are held fast by canonical rules, it is nevertheless expedient that those whom ecclesiastical discipline approves for grades of promotion should pledge the vows of their promise under a guarantee. For what is promised individually is usually feared more than what is included in a general pledge. §1. And therefore it pleased this holy council that each one who is about to approach ecclesiastical grades should not receive the consecration of honor before he promises by a declaration of his agreement that, guarding the Catholic faith with sincere devotion of heart, he ought to live justly and piously, contradict the canonical rules in none of his works, and render in all things the honor owed and the reverence of obedience to the one set over him, according to that edict of Pope Leo: "One who knows himself to be placed over certain persons should not bear it grievously that another is placed over him, but should himself also render the obedience that he demands." Nevertheless, according to the manner of ecclesiastical custom, a penalty is to be imposed upon agreements of this kind and paid by those who are transgressors.

Thereafter it is arranged how ecclesiastical offices are to be ordained.

C. VII. How a bishop is to be ordained.

When a bishop is ordained, let two bishops place and hold the codex of the Gospels over his head and neck; and while one pours the blessing over him, let all the other bishops who are present touch his head with their hands.

C. VIII. How a priest is to be ordained. [From the same, c. 3.]

When a priest is ordained, while the bishop blesses him and holds a hand over his head, let all the priests who are present also hold their hands over his head beside the bishop's hands. But just as on

the day of his ordination a priest is surrounded over both shoulders by the stole, so at the time of consecration he ought constantly to use the same stole. Hence it is read in the Council of Braga [III, c. 3]:

C. IX. What each person received at the time of consecration, let him bear at the time of oblation.

We know that it was prescribed by ecclesiastical institution that every priest, when he is ordained, should be surrounded over both shoulders by the stole: namely, so that one who is commanded to stand untroubled amid prosperity and adversity may always appear surrounded over both shoulders by the ornament of the virtues. By what reasoning, therefore, does he not take up at the time of sacrifice what he does not doubt that he received in the sacrament? Hence it is fitting in every way that what each person received in the consecration of honor he should retain also in the oblation or reception of his salvation; namely, that when a priest approaches the solemn rites of the Mass, either about to offer sacrifice to God himself or about to receive the sacrament of the body and blood of our Lord Jesus Christ, he should be surrounded over both shoulders by the stole in no other manner than that in which he is recognized to have been consecrated at the time of his ordination, so that, pressing his neck and both shoulders together with one and the same stole, he may form the sign of the cross upon his breast. §1. But if anyone acts otherwise, he will be subject to the due excommunication. Part IV. GRATIAN. Neither bishops nor deacons, however, are permitted to use dalmatics without apostolic license. Hence Gregory to Aregius, bishop of the Franks [Book VII, epistle 111]:

C. X. Without apostolic license, neither bishops nor deacons may use dalmatics.

Our common son, the deacon Peter, made known to us that your fraternity, at the time when he was here, requested that we grant you and your archdeacon license to use dalmatics. But because he was compelled by the infirmity of his men and departed hastily, so that neither did the sorrow pressing upon him permit him to remain long, as was fitting and as the desired matter required, nor did consideration of ecclesiastical principle permit us, entangled in many affairs, to grant this new thing without counsel and suddenly, the effect of the requested matter was therefore delayed. Now, however, recalling to mind the good qualities of your charity, by the tenor of this our authority we grant the things requested; and we have conceded that you and your archdeacon are to be adorned with the use of dalmatics, and have transmitted those dalmatics with our most beloved son Cyriacus the abbot carrying them.

C. XI. How a deacon is to be ordained.

[From the Fourth Council of Carthage, c. 4.] When a deacon is ordained, only the bishop who blesses him is to place his hands over his head, because he is consecrated not to the priesthood but to the ministry. Part V. GRATIAN. It is asked, however, whether after the blessing the hands of priests and deacons ought to be anointed with the liquid of chrism. Pope Nicholas [I] writes thus concerning these things to Radulf, archbishop of Bourges:

C. XII. The hands of neither priests nor deacons are to be anointed with chrism at consecration.

Furthermore, you ask whether the hands of priests alone, or also those of deacons, ought to be anointed with the liquid of chrism when they are ordained. In the holy Roman Church, which by God's authorship we serve, this is done to neither. But we nowhere read—unless forgetfulness deceives us—that it was done by the ministers of the new law. We therefore direct your holiness to the canonical decrees of blessed Pope Innocent, and the opening portions of the page sent to Decentius, bishop of Gubbio, will teach you abundantly what things are to be observed by you in consecrations and orders.

[PALEA.

C. XIII. From the Second Council of Seville, c. 5.

From the epistle of Pope Simplicius directed to Bishops Severus and Florentinus. It came to the cognizance of our examination through the report of a Gabrensian deacon concerning certain clerics of that Church. When one of them was being consecrated to the priesthood and two to the ministry of the Levites, their bishop, detained by pain of the eyes, is reported only to have placed his hand over them, and a certain priest, contrary to ecclesiastical order, to have given them the blessing. Because of the audacity of so great a presumption, this priest could have been accused and condemned in the present judgment if, while still placed in the body, he had not been forestalled by the summons of death. But because he, now left to divine examination, cannot be accused by human judgment, we have decreed that those who survive, and received from him not the title of consecration but rather a written attestation of disgrace, should be deposed and cast out by equitable judgment from the grade of the priestly or Levitical order that they perversely obtained, lest such usurpation make a license for itself hereafter. For such persons were deservedly judged to be removed because they were found to have been perversely established.] GRATIAN. Likewise it is asked whether the ordination of those upon whom a bishop, impeded by a weakness of the eyes, imposes hands while a priest says the prayer over them is to be held valid. Concerning these things it was established thus in the Council of Toledo:

C. XIV. Both the ordainer and the ordained are to undergo the penalty of condemnation when the bishop imposes a hand and another says the prayer.

While certain clerics—one to the priesthood and two to the ministry of the Levites—were being consecrated, their bishop, detained by pain of the eyes, is reported only to have placed his hand over them, and a certain priest, contrary to ecclesiastical order, to have given them the blessing. But because the latter, already left to divine examination, cannot be accused by human judgment, let those who survive lose the grade of the priesthood or Levitical order that they perversely obtained.

C. XV. How a subdeacon is to be ordained.

Part VI. When a subdeacon is ordained, because he does not receive the imposition of a hand, let him receive from the hand of the bishop an empty paten and an empty chalice; but from the hand of the archdeacon let him receive an ewer together with a basin and a hand towel.

C. XVI. How an acolyte is to be ordained.

When an acolyte is ordained, let him indeed be taught by the bishop how he ought to act in his office; but let him receive from the archdeacon a candlestick with a candle, so that he may know himself to be assigned to kindling the lights of the Church. Let him also receive an empty small pitcher for supplying wine for the Eucharist of the blood of Christ.

C. XVII. How an exorcist is to be ordained.

When an exorcist is ordained, let him receive from the hand of the bishop a little book in which the exorcisms are written, with the bishop saying to him: "Receive this and commit it to memory, and have the power of imposing hands upon a possessed person, whether baptized or a catechumen."

C. XVIII. How a reader is to be ordained.

When a reader is ordained, let the bishop address the people concerning him, indicating his faith, life, and ability. After this, while the people look on, let him hand to the reader the codex from which he is to read, saying: "Receive this and be a reporter of the word of God, destined, if you faithfully and usefully fulfill the office, to have a portion with those who have ministered the word of God."

C. XIX. How an ostiary is to be ordained.

When an ostiary is ordained, after he has been instructed by the archdeacon how he ought to conduct himself in the house of God, at the recommendation of the archdeacon let the bishop hand him the keys of the church from the altar, saying to him: "Act in such a way as one who will render an account to God for those things that are unlocked with these keys."

C. XX. How a psalmist is to be ordained.

A psalmist, that is, a singer, can receive the office of singing without the knowledge of the bishop, solely at the command of a priest, with the priest saying to him: "See that what you sing with your mouth you believe with your heart, and that what you believe with your heart you prove by works." GRATIAN. Clerics are prohibited from growing their hair; their head ought to be shaved above in the manner of a sphere. Hence Pope Anicius [to the bishops of Gaul]:

C. XXI. Clerics are to be prohibited from growing their hair.

Prohibit, brothers, throughout all the churches of your regions, that clerics, according to the Apostle, should not grow their hair, but should shave the head above in the manner of a sphere.

C. XXII. On the same matter.

Likewise from the Council of Agde [c. 20]. Clerics who grow their hair are to be shorn by the archdeacon, even if they are unwilling, against their will. Nor may they use or possess garments or footwear other than such as befits religion.

C. XXIII. On the same matter.

Likewise Gregory II [in the council held at Rome in the Basilica of Saint Peter, c. 17]. If any cleric lets his hair grow long, let him be anathema.

C. XXIV. In what garments a religious woman is to be consecrated.

When a religious virgin is presented to her bishop for consecration, let her appear in such garments as she will always use, suitable to religious life and profession. GRATIAN. Women dedicated to God are prohibited from touching consecrated vessels and the vestments of the altar and from carrying incense about the altars. Hence Pope Soter to the bishops of Italy [epistle II]:

C. XXV. Women are to be prohibited from touching the vestments of the altar and consecrated vessels.

It has been reported to the apostolic see that women consecrated to God or nuns among you touch sacred vessels or consecrated altar cloths and carry incense about the altars. No one who rightly understands doubts that all these things are full of blame and reproof. Therefore, by the authority of this holy see, we judge that you are utterly to cut away all these things as quickly as you can. And lest this pest be spread more widely, we command that it be wiped away most swiftly throughout all the provinces.

C. XXVI. Subdeacons are not permitted to enter the sacristy.

Likewise from the Council of Laodicea [c. 21]. Subdeacons ought not to have license to enter the secretarium or sacristy—which the Greeks call the *diaconium*—and to touch the Lord's vessels.

[C. XXVII.]

Likewise. A minister ought not to use stoles or to abandon the doors.

[C. XXVIII.]

Likewise. Readers and psalmists ought not to use stoles and thus to read or sing psalms.

C. XXIX. A woman is not permitted to teach men in an assembly.

Likewise from the Fourth Council of Carthage [cc. 99 and 98]. A woman, although learned and holy, is not to presume to teach men in an assembly. A layman, however, when clerics are present, is not to dare to teach unless they request it.

C. XXX. Ministers who have not been consecrated are not permitted to touch the Lord's vessels.

Likewise from the Council of Agde [c. 66]. Unconsecrated ministers ought not to have license to enter the secretarium—which the Greeks call the *diaconium*—and to touch the Lord's vessels.

C. XXXI. None of the readers is permitted to carry sacred vessels.

Likewise from the First Council of Braga [c. 10]. None of the readers, nor any others except those who have been ordained subdeacons by the bishop, may carry the sacred vessels of the altar.

C. XXXII. On the same matter, and that clerics are not to grow their hair.

Likewise from the Council of Pope Martin [c. 41]. No one except a subdeacon or an acolyte may touch the ministries—the Lord's vessels—in the secretarium. §1. Nor ought clerics to grow their hair and minister in that manner, but they are to have a shorn head, exposed ears, and to put on a garment down to the ankles according to Aaron, so that they may be adorned in habit.

C. XXXIII. How the bridegroom and bride are to be blessed.

When a bridegroom and bride are to be blessed by a priest, let them be presented by their parents or by the attendants of the bridal pair; and when they have received the blessing, let them remain in virginity that same night out of reverence for that blessing.

Distinction XXIV

GRATIAN. Part I. It has been briefly shown how a bishop is to be examined and how he, together with the others established below him, is to be ordained. But now it must be seen concerning priests and the others whether they are to be promoted without examination. Concerning these things Paul the Apostle writes thus to Timothy: "Impose hands hastily upon no one, and do nothing without prior judgment by inclining to the other side." [PALEA.

C. I. On the same matter.

From the decrees of Pope Sylvester in the Roman Synod, c. 9. Let none of the acolytes or subdeacons offer to others a thing consecrated by a priest, because a minister is one thing and an assistant another, but let him only support what the priest has placed upon him, blessed by his own mouth.]

C. II. No cleric is to be ordained before probation.

Likewise from the Third Council of Carthage, c. 22. No cleric is to be ordained unless proved either by the examination of the bishops or by the testimony of the people.

C. III. Clerics of the same church are to be promoted to its ministry.

Likewise Pope Gelasius to Bishop Celestine. The priests, deacons, and all clerics of the city of Stonium suggested to us by a petition presented that in the church of blessed Eleutherius, bishop and martyr—which is proved to have been constructed in the parish of the aforesaid city—the priest who had been established there had died, and that Julian, deacon of that church, ought as swiftly as possible to be ordained in his place because of the renown of that place. And therefore, most beloved brother, if there is nothing in his life or morals that runs contrary to the enactments of the canons, you will adorn the aforesaid man with the honor of the priesthood, knowing that we created you under the name of a visitor, not of a cardinal pontiff. Likewise, you will also substitute the deacon Felicissimus in the ministry of that church, if his manner of life permits, so that a most celebrated place of procession may lack neither a priest nor a minister for the consecration of the mysteries.

C. IV. The other bishops are to be promoted by the examination of the metropolitans and bishops.

Likewise from the Council of Laodicea [c. 12]. Let bishops be advanced to ecclesiastical dignity by the judgment of the metropolitans and of those bishops who are round about, namely those who over a very long time are proved both in the word of faith and by the example of an upright manner of life. Part II. GRATIAN. Since, therefore, no one is to be ordained without examination, it must be considered in what manner and at what time the examination of priests and of the others placed below them ought to take place. Concerning these things it is read that it was established thus in the Council of Nantes [c. 11]:

C. V. Those who are to be ordained are to assemble for examination on Wednesday.

When a bishop arranges to perform ordinations, all who wish to approach the sacred ministry are to be summoned to the city on the Wednesday before the ordination itself, together with the priests who ought to present them. Then the bishop ought to choose from his side priests and other prudent men, knowledgeable in divine law and exercised in ecclesiastical sanctions, who are diligently to investigate, before all things, the lineage, life, homeland, age, education, and place where those to be ordained were brought up; whether they are well educated; whether instructed in the law of the Lord; whether they firmly hold the Catholic faith and are able to assert it in simple words. §1. Those to whom the care is entrusted, however, ought to beware lest, enticed either by reason of favor or by desire for any gift, they deviate from the truth, so that they present to the bishop's hands one unworthy and less suitable to receive sacred grades. But if they do this, both the one who approached unworthily will be removed from the altar, and those who attempted to sell the gift of the Holy Spirit, already condemned before God, will lack ecclesiastical dignity. §2. Therefore let them be examined diligently for three continuous days, and thus on Saturday let those who have been approved be presented to the bishop. GRATIAN. But in other respects, namely without the counsel of the clerics and the testimony of the people, let no bishop presume to ordain anyone. Hence it is read in the Fourth Council of Carthage [c. 22]:

C. VI. A bishop is not to ordain clerics without the counsel of his clerics.

A bishop is not to ordain clerics without the counsel of his clerics, so that he also seeks the acquiescence and testimony of the citizens. Part III. GRATIAN. It is asked what ought to be done concerning those who were advanced without examination. Concerning these things it is read thus in the Council of Pope Martin:

C. VII. Concerning those who are ordained without examination and afterward confess their sins.

If any priest or deacon was ordained without any examination, or indeed, when they were examined, confessed their criminal sins, or after ordination were exposed by others, let them be cast out of the clergy. §1. Let the same also be observed concerning the whole order of clerics, for the holy Catholic Church claims for herself that which is irreproachable.

Distinction XXV

GRATIAN. Part I. It has been briefly proved that no one is to be ordained without examination. Isidore, bishop of Seville, writes in a letter to Leudefredus what pertains to a bishop and what to each inferior, saying thus:

C. I. What the office of bishops and of the others is in the Church.

Having read through the letters of your holiness, I rejoiced that by their report I learned of your desired well-being. Concerning the things, however, that the discourse of your eloquence endeavored to intimate in what followed, I give thanks to God that you expend solicitude upon the pastoral office and inquire how ecclesiastical offices are ordered; and although all things are known to your prudence, nevertheless, because you consult me with brotherly affection, I shall explain to the degree

I am able and speak concerning all the grades of the Church and what pertains to each. §1. To the ostiary belong the keys of the church, so that he may open and close the temple of God and guard all things that are within and without; receive the faithful and keep out the excommunicated and unbelievers. §2. To the exorcist belongs the memorization of the exorcisms and the imposition of hands upon possessed persons and catechumens in exorcizing them. §3. To the acolyte belongs the preparation of lights in the sacristy; he carries the candle, and he prepares the things supplied for the Eucharist of the chalice. §4. To the psalmist belongs the office of singing: to say blessings, praises, the sacrifice, responsories, and whatever pertains to skill in singing. §5. To the reader belongs the pronouncing of readings and the preaching to the peoples of the things that the prophets foretold. §6. To the subdeacon belongs the carrying of the chalice and paten to the altar of Christ and handing them to the Levites, and ministering to them; also holding the small pitcher, basin, and hand towel; and furnishing water to the bishop, priests, and Levites for washing their hands before the altar. §7. To the deacon belongs assisting the priests and ministering in all things that are conducted in the sacraments of Christ: namely in baptism, in chrism, in the paten and chalice; also bringing in the offerings and arranging them upon the altar; also preparing and clothing the table of the Lord; carrying the cross; and proclaiming the Gospel and the Apostle. For just as readers are commanded to proclaim the Old Testament, so deacons are commanded to proclaim the New. To him also belongs the office of prayers and the recitation of names; he admonishes the people to have their ears toward God; he exhorts them to cry out; he gives the peace; and he makes the announcements. §8. To the priest belongs confecting the sacrament of the body and blood of the Lord upon the altar, saying prayers, and blessing the gifts of God. §9. To the bishop belongs the consecration of basilicas, the anointing of the altar, and the confection of chrism. He distributes the aforesaid offices and ecclesiastical orders; he blesses sacred virgins; and although each one precedes in individual matters, he is nevertheless the pre-ordainer in all. §10. These are the orders and ministries of clerics, which nevertheless by pontifical authority are divided under the care of the archdeacon and the solicitude of the primicerius and treasurer. §11. For the archdeacon commands subdeacons and Levites. To him belong these ministries: ordering the clothing of the altar by the Levites; care of the incense and the necessary solicitude for the sacrifice; determining which of the Levites is to read the Apostle and the Gospel, which is to say the prayers, or which is to sing the responsories on Sundays or solemnities. The solicitude and ordering of parishes and their disputes also pertain to his care. For the repair of diocesan basilicas he makes the proposal to the priest. At the bishop's command he inspects the parishes and the ornaments or possessions of basilicas or parishes; the same man reports to the bishop the acts of ecclesiastical manumissions. He receives the money collected from the communion and carries it to the bishop; the same man distributes their own portions to the clerics. The transgressions of deacons are announced to the bishop by the archdeacon. In the sacristy he announces to the priest the days of fasts and solemnities, and this is proclaimed publicly in the church by the priest. But when the archdeacon is absent, the next deacon fulfills his office. §12. Let the archpriest, however, know that he is under the archdeacon and that he is to obey his precepts as those of his bishop; and, as pertains specially to his ministry, that he is to exercise care over all the priests placed in the order and stand continually in the church; and when the absence of his bishop occurs, he himself is to celebrate the solemn rites of the Mass in his place and say the collects, or the one to whom he himself enjoins it. §13. To the primicerius belong the acolytes, exorcists, psalmists, and readers; also the giving of the signal for the office of the clerics and for uprightness of life, and

the careful singing and performance of the office; determining which cleric ought to say the readings, psalm, praises, offertory, and responsories; also the order and manner of singing psalms in choir according to the solemnity of the seasons; and also the ordering of the lights to be carried. If anything is also necessary for the repair of the basilicas that are in the city, he is to announce it to the priest. He is to direct the bishop's letters concerning days of fasting to the parishioners through the ostiaries. He himself is to discipline clerics whom he knows to be offending; but when he cannot amend them, he is to carry their transgressions to the bishop's knowledge. He is to appoint the guardians of the basilicas and arrange the registers. But when the primicerius is absent, the one who is nearest to him either by law or by learning is to attend to the things that have been stated. §14. To the treasurer belong the ordering of the ostiaries of the basilicas, the preparation of incense, care of confecting the chrism, care of ordering the baptistery, and the preparation of lights in the sacristy and at the sacrifices. Part II. GRATIAN. From this epistle it is clear what belongs to each office. There is also another distinction of bishops, priests, and deacons, which Clement made in his epistle, saying thus:

C. II. What it is fitting to hear from bishops, what from priests, and what from deacons.

It is fitting to hear the bishop more attentively and to receive from him the doctrine of the faith; but to seek admonitions for life from priests, and from deacons the order of discipline. GRATIAN. A priest also surrounds both shoulders with the stole, but a deacon only the left, so that he may run about unencumbered for the ministry. Hence in the Fourth Council of Toledo, c. 40:

C. III. Why a Levite surrounds only one shoulder with the stole.

A Levite ought to wear one stole upon the left shoulder because he prays, that is, preaches; but he ought to have the right side free so that he may run about unencumbered for the priestly ministry. Part III. GRATIAN. Now, however, returning in order through the individual grades, let us consider briefly who can ascend from which orders into which grade; who can or cannot be restored after a fall; for which faults they deserve to be cast down from their own grade; by whose accusation and with which persons testifying they can be convicted; and by whose sentence they are to be absolved or condemned. §1. And first, beginning from the pontifical grade, let us diligently investigate what sort of man one who is to be ordained a bishop ought to be, following the rule of the Apostle that he writes to Timothy and Titus concerning a matter of this kind, saying: "A bishop ought to be irreproachable," that is, not liable to reproof. This is to Timothy. To Titus, however: "A bishop ought to be without crime," which, as Jerome writes to Oceanus, is the same thing. §2. By the name of crime, however, any sin is understood. Hence in the same epistle Jerome says: "It is a thing almost contrary to nature that anyone should be without sin; but let such a one be chosen that by comparison with him the others are called a flock." In the epistle to Titus, however, a criminal sin or criminal infamy is called crime. Hence it is read there: "A crime is a complaint, that is, a sin worthy of accusation and condemnation." §3. The command that one who is chosen as bishop be without crime is to be understood not of the time before baptism but of the time after baptism, namely so that from the time of baptism the consciousness of no crime should gnaw at his mind. §4. Elsewhere the designation "crime" extends broadly, embracing every sin that proceeds from deliberation. Hence Bede, upon the epistle of James: "He says and commands that sins committed from ignorance or human frailty be confessed one to another because they are easily forgiven; but whatever things are

done from deliberation are not forgiven except through penance." Hence Augustine also says: "No sin is so venial that it does not become criminal when it pleases." Elsewhere, however, it signifies only those things that, once committed, suffice for condemnation. §5. For many things proceed from deliberation which, unless they have been repeated more often and brought into custom, although they burden a person after death, nevertheless do not destroy him eternally; because although by a certain reasoning they are called crimes, they nevertheless are not mortal and capital. Hence Augustine, in the homily *On the Fire of Purgatory*, expounding the words of the Apostle, "If anyone builds upon this foundation wood, hay, stubble": "There are many who, understanding this reading badly, are deceived by false security, while they believe that if they build capital crimes upon the foundation of Christ, the sins themselves can be purged through a transitory fire and they can afterward reach eternal life. This understanding, most beloved brothers, is to be corrected, because those who flatter themselves thus deceive themselves. For by that transitory fire concerning which the Apostle says, 'He himself shall be saved, yet so as through fire,' not capital but minute sins are purged. Concerning these, although not all, at least some are to be recalled, lest anyone attempt vainly to excuse himself and say that he does not know which are minute sins and which are capital crimes. §6. And although the Apostle recalled many capital crimes, we nevertheless, lest we appear to cause despair, shall say briefly what they are: sacrilege, homicide, adultery, fornication, false testimony, robbery, theft, pride, envy, avarice; and, if it is held for a long time, wrath, and if it is continual, drunkenness, are counted in their number. For whoever recognizes that any one of these sins rules in him, unless he worthily amends it, and, if he has the time, performs penance for a long time, distributes abundant alms, and abstains from those sins, will not be able to be purged by that transitory fire concerning which the Apostle speaks, but the eternal flame will slaughter him without any remedy. §7. What the minute sins are, however, although they are known to all, nevertheless, because it is lengthy to rehearse them all, it is necessary that we name at least some of them. Whenever anyone takes more food or drink than is necessary, let him know that it pertains to the minute sins; whenever he speaks more than he ought or remains silent more than is expedient; whenever he exasperates a poor person who petitions importunately; whenever, although sound in body, he wishes to dine while others fast, or, given over to sleep, rises later for church; whenever he knows his wife apart from the desire for children; whenever he inquires too late after those placed in prison or visits the sick too late; if he neglects to recall those in discord to concord; if he exasperates either a neighbor, wife, son, or servant more than he ought; if he flatters more than he ought; if he wishes to flatter any person of higher station, either voluntarily or from necessity; if, while the poor go hungry, he prepares exceedingly delightful or costly banquets; if he occupies himself either in church or outside church with idle tales, for which an account is to be rendered on the day of judgment; if, while we swear incautiously and then cannot fulfill it because of some necessity, we assuredly perjure ourselves; and when with every readiness or rashness we curse, although it is written: 'Nor shall those who curse possess the kingdom of God.'"

C. IV. Which are the venial sins that are purged after this life.

Likewise Gregory [*Dialogues*, Book IV, c. 9]. As each one departs from here, so he is presented at judgment; but nevertheless it is to be believed that for certain faults there is a fire of purgation before judgment, because Truth says: "If anyone has spoken blasphemy against the Holy Spirit, it shall be forgiven him neither in this age nor in the future." In this sentence it is given to be understood that

certain faults can be remitted in this age and certain ones in the future. For when this is denied concerning one, it is evident from the consequent meaning that it is conceded concerning certain others. But nevertheless, as I said before, it is to be believed that this can be done concerning small and very minute sins, such as continual idle speech, immoderate laughter, or the sin of household care—which is scarcely conducted without fault even by those who know how they ought to avoid fault—which also burden persons after death if they were by no means remitted while they were still placed in life.

[PALEA.

C. V. On the same matter.

Likewise Augustine in the book *On True and False Penance*, c. 18. One who has deferred the fruit of conversion to another age will first be purged by the fire of purgation. Although this fire is not eternal, it is nevertheless grievous in a marvelous manner. For it surpasses every punishment that anyone has ever suffered in this life or can suffer.] GRATIAN. Elsewhere, however, it signifies only those offenses for which there is perpetual infamy. Hence that saying of Jerome: "First, therefore, without crime," etc. Hence Jerome writes in the same epistle to Titus [c. 1]:

C. VI. From the day of baptism, one who is to be ordained as bishop ought to be found without crime.

First, therefore, a bishop is commanded to be without crime, which in another word I think is named "irreproachable" to Timothy: not that only at that time at which he is to be ordained he is without any crime and has washed away former stains by a new manner of life, but that from that time at which he was reborn in Christ he is gnawed by no consciousness of sin. For how can a ruler of the Church take evil away from its midst when he himself has fallen into a similar offense? Or with what freedom can he reprove one who sins, when the latter silently answers him that he himself committed the same things that he reproves? GRATIAN. Behold: one to be ordained as bishop ought to be immune from crime not only at the time of his ordination, but also throughout all the time after baptism.

Distinction XXVI

GRATIAN. Part I. In both epistles there follows: "the husband of one wife," namely after baptism, not before baptism. Hence Jerome writes to Oceanus [epistle 83]:

C. I. One who is to be ordained a bishop ought to have been married only once after baptism.

The husband of one wife, that is, married once, after baptism. For even if before baptism he had a wife who died, this is not imputed to one who is entirely new, whom neither fornications nor the other things that occurred before now harm.

C. II. One who had one wife before baptism and another after baptism is not to be ordained.

Augustine, however, testifies to the contrary, writing on the epistle to Titus. Those understand more acutely who have judged that even one who, as a catechumen or pagan, had another wife is not to be

ordained, because the matter concerns the sacrament, not sin. On account of the sanctity of the sacrament, just as a woman, if she was violated while a catechumen, cannot after baptism be consecrated among the virgins of God, so it did not appear absurd that a twice-married man had not sinned but had lost the norm of the sacrament—not with respect to the merit of life, but to the seal of ordination. "The husband of one wife": a bishop signifies the unity from all nations subjected to one husband, Christ. Part II. §1. Just as it is not permitted to serve two masters, so it is not permitted to apostatize from the one God and pass into the superstition of another.

C. III. One who had one wife before baptism and another after baptism is proved twice-married.

Likewise Innocent [I] to Rufus and Eusebius and the other Macedonian bishops [epistle XXII, c. 2]. It is then proposed that one who as a catechumen had a wife and lost her ought not to be called twice-married if after baptism he obtained another, and that she who was joined to the new man should be regarded as the first because that marriage was taken away through the sacrament of baptism together with the other crimes. Since this is assuredly said concerning one wife, if he had three wives while placed in the old man, she who is fourth after baptism will, for those interpreting thus, be his first; and she who was taken in the fourth place will equally receive the name of virgin. Who, I ask, does not see that this is contrary to the precept of the Apostle, who says: "A man who is the husband of one wife ought to be made a priest"? But it is objected that in baptism everything whatsoever that was done in the old man was dissolved. Tell me, that I may speak with your peace: are crimes alone forgiven in baptism, or also those things that are fulfilled according to the Lord's precepts and God's institutions? Is taking a wife a crime or is it not a crime? If it is a crime, then—with the aforesaid pardon let me say it—he who commanded in paradise that crimes be committed, when he himself blessed them, will be the author of the fault. But if it is not a crime, because it is unlawful to call what God instituted a crime, and Solomon added, "For a wife is prepared for a man by God," how is that which is read to have been consummated with God as author believed to be forgiven among crimes? What is to be judged concerning the children of such persons? Will those who were born of the woman who was the wife before baptism not be admitted to fellowship in the inheritance, and will they be called either natural or spurious because there is no legitimate marriage except that which, as it seems to you, is entered after baptism? The Lord himself, when he was asked by the Jews whether it was lawful to dismiss a wife, and when he explained that it ought not to be done, added: "Therefore, what God has joined, let man not separate." And lest he be believed to have spoken concerning those marriages that are obtained after baptism, let them remember that this was both asked by the Jews and answered to Jews. §2. I ask, and anxiously ask, whether the wife of one who was formerly a catechumen and is afterward made faithful is one and the same, and whether the children whom he received from her while he was a catechumen and others afterward while faithful are to be called brothers; or whether, after their father has died, they have no fellowship in the inheritance to be divided, because spiritual regeneration is believed to have taken away from them the name of sons. Since it is absurd to think thus, what reason is there for this to be defended and tossed about more by empty opinion than strengthened by any authority, when what the law commanded and God joined cannot be reckoned among sins? §3. Suppose one who, while a catechumen, devoted himself to virtues, followed humility, maintained patience, gave alms, rescued by any means those destined for death, abhorred adulteries, and maintained chastity. I ask: when he has been made faithful, does he lose these things because through baptism everything that the old

man had done is thought to be taken away? Look upon Cornelius, a gentile man devoted to prayers and alms, hearing an angel through revelation and seeing Peter himself: were these things, on account of which baptism appears to have been granted to him, taken away from him through baptism? If this is believed, believe me, the error is not small, because whatever has been done well and guarded according to the precepts of the law cannot perish for those who do it. §4. Therefore, because the bond of marriage is effected by God's command, it cannot be called a sin; and what is not a sin ought not to be believed to be dissolved among sins. It will therefore be sound to judge that the name of the former wife cannot be abolished, since what was fulfilled by God's will was not forgiven as a sin.

C. IV. In baptism fault is forgiven; the law of marriage is not abolished.

Likewise Ambrose in the book *On Duties* [Book I, final c. 80]. Only one bond, and not a repeated one, is permitted to us; and in marriage itself there is a law not to repeat marriage or the union of a second wife. This appears marvelous to very many, since even marriages repeated before baptism generate impediments to the election for office and the prerogative of ordination, although offenses are not accustomed to harm if they have been forgiven by the sacrament of the laver. But we ought to understand that fault can be forgiven by baptism; law cannot be abolished. In marriage there is not fault but law. What is of fault, therefore, is remitted in baptism; what is of law is not dissolved in marriage. But how can one who himself has entered marriages repeatedly be an exhorter of widowhood? GRATIAN. John the Baptist also, when he prohibited Herod from incest, saying, "It is not lawful for you to have your brother's wife," plainly showed that marriages exist among unbelievers. Hence it is given to be understood that not only those who enter marriages repeatedly after baptism are called twice-married, but also those who are proved to have had one wife before baptism and another after baptism. §1. A twice-married man, however, ought not to be ordained as priest, not because he offended by taking a second wife, but because he has been divested of the prerogative of a priest. Hence Ambrose in the epistle to the people of Vercelli [Book X, epistle 82, says]:

C. V. A twice-married man does not sin, but is divested of the prerogative of a priest.

One who is without crime and the husband of one wife is held to the law of receiving the priesthood. But one who has repeated marriage indeed does not have the fault of one defiled, but is divested of the prerogative of a priest.

Distinction XXVII

GRATIAN. Part I. Since it is commanded that a bishop be chosen as the husband of one wife, it is asked whether this is to be understood of the time of ordination, so that during the time of his administration he can enjoy union with her whom, as his only wife and a virgin, he espoused to himself. Pope Martin prohibits this, saying:

C. I. A deacon is not to be ordained unless he has professed chastity.

If a deacon who is chosen has declared himself in favor of contracting marriage and has said that he cannot remain in chastity, let him not be ordained. But if he was silent at the ordination and was

ordained, and afterward desired marriage, let him be excluded from the ministry and cease to belong to the clergy. GRATIAN. By this authority it is given to be understood that those who have wives or wish to take them can become neither deacons nor priests unless they profess continence. §1. But if a deacon wishes to cease from the ministry, after contracting marriage he can lawfully use it. For although at his ordination he offered a vow of chastity, nevertheless so great is the force in the sacrament of marriage that the marriage itself cannot be dissolved even because of the violation of a vow. Hence Augustine in the book *On the Good of Marriage*, to Julian [c. 10]:

C. II. Those marrying after a vow are not to be separated from one another.

Part II. Certain persons assert that those marrying after a vow are adulterers. But I say that those who separate such persons sin gravely.

C. III. On the same matter.

Likewise Theodore. If a man having a vow of virginity is joined to a wife, let him not afterward dismiss the wife, but let him do penance for three years. Jerome, however, writes to the contrary:

C. IV. For those who make a vow, it is damnable to wish to marry.

For those vowing virginity, not only to marry but even to wish to marry is damnable.

C. V. She who vowed virginity will have condemnation if she marries.

The same, *Against Jovinian* [Book I]. If a virgin marries, she does not sin—not that virgin who has dedicated herself to divine worship. For if any of these marries, she will have condemnation because she made her first faith void.

C. VI. She who pretends that she is a religious woman cannot marry.

Likewise Nicholas [Pope Nicholas I to Albinus, archbishop of the Church of Vienne]. As to what you asked concerning the woman who, after the death of her husband, placed the sacred veil upon her head and pretended under that veil that she was a religious woman, but afterward returned to marriage: it seems good to me, because she wished through hypocrisy to disturb the ecclesiastical rule and did not remain lawfully in her vow, that she do penance for the unspeakable mockery, return to that which she pledged, and remain in the sacred ministry that she began.

[PALEA.

C. VII. The same in the same place.

For if we consent that anyone may pretend each of the ecclesiastical sacraments however he wishes and not perform it truly, the whole ecclesiastical order will be disturbed, neither will the laws of the Catholic faith stand, nor will the sacred canons be duly observed. For what did it profit Simon Magus to receive sacred baptism feignedly and to pretend that he would remain in Christianity, when, after his fraud was detected through the Apostle, what would befall him was foretold? For he says: "May your money be with you unto perdition, for your heart is not right before God. Therefore do penance for this wickedness of yours and ask God whether perhaps this thought of your heart may be forgiven you; for I see that you are in the gall of bitterness and the bond of iniquity." Therefore we judge that

such persons, unless they come to their senses, are to be struck with the spiritual sword. For it is not lawful to lie to the Holy Spirit, as Ananias and Sapphira lied and immediately perished.]

C. VIII. Those established in sacred orders are not to take wives; and if they take them, they are to be separated.

Likewise Pope Callixtus [II]. We utterly forbid priests, deacons, subdeacons, and monks to have concubines or to contract marriage; we also judge, according to the definition of the sacred canons, that marriages contracted by persons of this kind ought to be dissolved and the persons brought back to penance. GRATIAN. A distinction must be made here: among those who make vows, some make vows simply, concerning whom Augustine and Theodore spoke; others are those for whom, after the vow, there follows the blessing of consecration or the profession of religious life, concerning whom Jerome, Nicholas, and Callixtus wrote. Hence Jerome, writing against the same Jovinian [Book I], says:

C. IX. Virgins who marry after consecration are incestuous.

Virgins who marry after consecration are not so much adulterous as incestuous.

Distinction XXVIII

GRATIAN. Part I. Behold, it has been shown that those unwilling to practice continence can ascend neither to the subdiaconate nor to the higher grades. Hence those approaching the subdiaconate are commanded not to be admitted without a vow of chastity, by the authority of blessed Gregory, who, writing to Peter the subdeacon [Book I, epistle 42, at the end], says:

C. I. Let one who does not promise that he will live chastely not be made a subdeacon.

Let bishops presume to make no one a subdeacon unless he has promised that he will live chastely, because no one ought to approach the ministry of the altar unless his chastity has been approved before he receives the ministry.

C. II. Incontinent subdeacons and those established above them who take a wife or concubine are to lack ecclesiastical benefice and office.

Likewise Innocent II. We decree that those who, while in the order of the subdiaconate or above it, have taken wives or possessed concubines are to lack office and ecclesiastical benefice. For since they ought to be and to be called the temple, vessels of the Lord, and sanctuary of the Holy Spirit, it is unworthy that they serve beds and impurities.

C. III. Those who are ordained as deacons or priests are to promise that they will live chastely.

Likewise from the Fifth Council of Toledo. Part II. When priests and deacons are established throughout the parishes, they ought to make a profession to their bishop that they will live chastely and purely under the fear of God, so that, while such a profession binds them, they may retain the discipline of a holy life.

C. IV. One who does not have long-standing continence of his body ought not to be elected as bishop.

Likewise Gregory to the noble citizens of Naples [Book VIII, epistle 40]. Part III. Before your writings came to us, we learned by the report of certain persons that the deacon John, who was elected by the other party, has a little daughter. Hence, if they had wished to attend to reason, neither ought the others to have elected him nor ought he himself to have consented. For with what presumption does one dare to approach the episcopate who, with his daughter as witness, is convicted of not yet possessing long-standing continence of his body?

C. V. Those about to approach the subdiaconate are to profess continence.

Likewise from the Second Council of Toledo [c. 1]. Part IV. Concerning those whom the will of their parents has bound to the office of the clerical state from the first years of infancy, we establish that this is to be observed: that as soon as they have been tonsured or handed over to the ministry of readers, they ought to be educated in the house of the Church under the bishop's presence by the superior appointed over them. But when they have completed the eighteenth year of their age, their will concerning seeking marriage is to be investigated by the bishop in the sight of all the clergy and people. If, by God's inspiration, the grace of chastity pleases them, and they pledge themselves to preserve the promise of their chastity without the necessity of marriage, then, as seekers of the most narrow way, let them be subjected to the most gentle yoke of the Lord; and first, after probation of their profession, let them receive the ministry of subdeacon from the twentieth year. But if they pass twenty-five years blamelessly and without offense, they ought to be promoted to the office of the diaconate, if they are proved by the bishop able to fulfill it. Nevertheless, they must beware lest at any time, forgetful of their pledge, they voluntarily return either to earthly marriages or to secret intercourse. But if perhaps they do so, let them be held as guilty of sacrilege and estranged from the Church. Yet from those whom their own will at the time of inquiry persuades toward the desire to marry, we cannot take away the license conceded by the Apostle, provided that when, placed in marriage at an advanced age, they have pledged by equal consent that they will renounce the works of the flesh, they may aspire to sacred orders.

C. VI. One established in marriage ought not to be assumed into the priesthood.

Likewise from the Second Council of Arles [c. 2]. Part V. It is not fitting for anyone established in the bond of marriage to be assumed into the priesthood unless conversion has been promised.

C. VII. Deacons who do not profess chastity are not to be ordained.

Likewise from the same, III. Furthermore, it pleased the council that henceforth married deacons are not to be ordained unless they have first professed chastity with the resolve of conversion. GRATIAN. Yet by the preceding authority marriage appears to be permitted to deacons, since only married men are prohibited from being assumed into the priesthood. Further, by the following authority it appears to be permitted to subdeacons, since it is specially commanded concerning deacons that they are not to be ordained without probation of chastity. This same thing appears to have been permitted in the Synod of Ancyra, in which [c. 10] it was established thus:

C. VIII. Deacons are not to be prohibited from ministry because of marriage if at their ordination they say that they cannot remain continent.

Whatever deacons are ordained, if at the ordination itself they protested, saying that they wished to have wives and could not remain continent, then if they afterward enter marriage, let them remain in the ministry, because the bishop gave them license. But whoever remained silent and received the imposition of hands after professing continence, if they afterward enter marriage, ought to cease from the ministry.

C. IX. A priest who takes a wife is to be deposed from his order.

Likewise from the Council of Neocaesarea [c. 1]. Part VI. If a priest takes a wife, he ought to be deposed from the order. But if he has fornicated or committed adultery, he ought to be cast outside the Church and brought to penance among the laymen.

C. X. Concerning one who married the woman left by a certain deacon.

Likewise Gregory [Book XI, epistle 59]. Part VII. Because there are faults in which it is a fault to relax vengeance, the truth is always to be sought, so that inquiry should be made whether guilt condemns the accused or manifested innocence withdraws him from punishment. Thus it has reached us that the defender Fantinus wished to exercise vengeance against Peter, the bearer of the present letter, because, as is said, while he was a lessee he handed over to a husband the woman left by a certain deacon. But since this man asserts that she was not the wife of the deacon, saying that she did not come to him as a virgin and finally that she did not change her religious garment after he was promoted to sacred order, and also adding that before she came to the deacon and afterward she lived under an evil reputation, we therefore exhort your fraternity by these words to investigate this cause with an altogether subtle inquiry and with the fear of God, as is fitting. If it is established that the woman in question was in marriage with the deacon, let the aforesaid bearer be handed over in every way to the aforesaid defender and the rector of the patrimony for vengeance, and let those who were wickedly joined be separated with fitting correction. But if she was not in marriage with him, we wish you at our command to admonish the aforesaid Fantinus that he presume to do nothing to him and not burden him in any respect by a false accusation.

C. XI. Concerning the wife of a priest or deacon if she joins herself to another.

Likewise from the Council of Orléans [I, c. 13]. If a woman left by a priest or deacon joins herself to anyone in a double marriage, either let them be corrected and separated, or certainly, if they persist in the intention of the crime, let them be struck by an equal excommunication.

C. XII. On the same matter.

Likewise from the Council of Pope Martin. If any widow of a bishop, priest, or deacon takes a husband, let no cleric and no religious person take a meal with her; let her never receive communion; nevertheless, when she is dying, let the sacrament come to her aid.

C. XIII. The ordination of a certain bishop is deferred because he has a wife and children.

Likewise Pelagius to the patrician Cethegus. Part VIII. Concerning the prelate of the city of Syracuse, we had desired at the very beginning to obey the desires of your glory, had not manifold reasoning compelled us to defer the ordination of this man to the priesthood for no short time because either the quality of the person, as you too know better, or his surviving wife or children—through whom ecclesiastical property is accustomed to be endangered—suspended our minds from his ordination for a rather long time. And insofar as pertains to human caution, we deferred it for almost a whole year, supposing that the election of the Syracusans might turn out better. But because they persisted irrevocably in the resolve of their will and no other man was found in the same church unless it were deferred for still longer periods of time, lest they become somewhat more deranged, as we learned by the testimony of your son, the magnificent man who is praetor, amid uncertainties of this kind we judged it more prudent to do this: that by suitable foresight we should fortify, while preserving the disposition of the council, the cause on account of which the imperial constitution prohibits one having children and a wife from being promoted to the order of the episcopate. For this reason, with the greatest zeal, before he happened to be ordained by us, we exacted from the same bishop of the city of Syracuse a guarantee of this kind, through which, after a description of his present possessions had been made, he would both acknowledge how small his property was and would promise that neither through himself nor through his children and wife, nor through any related, domestic, or perhaps external person, would he ever dare usurp anything from the property of the Church; that he would associate all things acquired during the time of his episcopate with the dominion of his church; and that he would leave to his children or heirs nothing beyond what is now described. GRATIAN. Behold: by this authority one elected to the episcopate is prohibited from having a wife and children. But no one ought to be elected to the episcopate unless he is either a priest or a deacon; a subdeacon, however, may not be, unless necessity compels it. Therefore, whether he was a priest, deacon, or subdeacon, it appears that those established in the aforesaid orders can lawfully use marriage. §1. Therefore, because by the authority of Gregory one who handed over the woman left by a deacon to a husband is to be punished; likewise, in the Council of Neocaesarea a priest who takes a wife, not a deacon, is commanded to be deposed; likewise, in the Synod of Ancyra deacons who at their ordination say that they wish to have wives are not prohibited from ministry if they afterward enter marriage: it is evident that neither deacons nor subdeacons are to be prohibited from marriage. But as for what is objected concerning election, it is indeed true that no one is to be elected to the episcopate unless established in sacred orders; but the fact that this man has a wife and children does not conflict with the foregoing authorities concerning the continence of clerics. §2. For while in lay habit or established in the lesser orders he could have had a wife and children; afterward, having professed continence with the consent of his wife, he had attained the subdiaconate or diaconate or the grade of priest, and yet it was fitting for him to supply the necessities of life to his wife and children. §3. That passage of Gregory, however, is resolved in two ways: either because that church in which that deacon had served had not yet received the vow of continence among deacons and the other ministers, or because, as was written above concerning the man elected as bishop, the aforesaid deacon had taken her as wife before the subdiaconate. §4. But that passage of the Synods of Neocaesarea and Ancyra is understood either from the time or from the place: from the time, because the continence of ministers of the altar had not yet been introduced; from the place, because both

synods are eastern and the eastern Church does not receive a general vow of chastity. It nevertheless guards this with diligent observance: that after the priesthood has been obtained and the former wife, with whom he had been made a priest, has died, if he takes another wife, he is deposed. Likewise there is objected that which is read in the Canon of the Apostles [c. 6, elsewhere 5]:

C. XIV. A priest is not to despise his own wife for the sake of religion.

Part IX. If anyone teaches a priest to despise his own wife under the pretext of religion, let him be anathema.

C. XV. Let one who makes a distinction against a married priest on the occasion of marriage be anathema.

Likewise from the Council of Gangra [c. 4]. If anyone makes a distinction against a married priest, as though on the occasion of marriage he ought not to offer, and therefore abstains from his offering, let him be anathema.

C. XVI. Let a priest held in an unlawful marriage abstain from office.

Likewise from the Sixth Synod [c. 26]. Part X. We command that a priest held in an unlawful marriage is indeed to have his chair but to abstain from office. For indulgence of this kind is sufficient for him, because it does not follow that one who ought to cure his own wounds should bless others. For a blessing is the handing down of sanctification. But one who does not have this because of the offense of ignorance—how will he hand it down to others? Let him therefore bless neither publicly nor privately, nor distribute the Lord's body to others, nor minister in any other way; but let it suffice for him that he presides, and let him implore God that the iniquity of his ignorance be forgiven him. Moreover, it is manifest that this unlawful marriage too will be dissolved, and the man is in no way to have access to her on account of whom he was deprived of the sacred ministry.

C. XVII. Laymen are not to judge concerning priests.

Likewise Nicholas, in response to the consultations of the Bulgarians [c. 70]. Part XI. You decree that counsel is to be sought whether you ought to support and honor a priest having a wife or cast him away from you. To this we reply: although they themselves are highly blameworthy, it nevertheless befits you to imitate God, who makes his sun rise over the good and the evil. For you ought not for this reason to cast him away from you, because neither did the Lord cast Judas, although he was a deceitful disciple, from the number of the Apostles. But concerning priests, you who are laymen are neither to judge nor to investigate anything about their life; whatever it may be, it is to be reserved to the judgment of bishops.

Distinction XXIX

GRATIAN. But it must be noted that, according to Isidore, very many chapters are to be considered according to cause, place, and time. For he says:

C. I. Let the rules of the canons be understood according to time, place, person, and cause.

It is to be known that very many chapters are to be considered according to cause, person, place, and time. Because their modes are not investigated to the marrow, some persons, becoming entangled, strike against the labyrinth of error when they judge before they understand and blame before by repeated reading they inquire. Hence Gregory also says:

C. II. The rules of the saints are moderated according to the variety of circumstances.

The rules of the holy fathers were handed down according to time, place, and person, with the necessity of the affair pressing.

[C. III.] The Scriptures are to be understood according to the diversity of places, times, and persons.

Likewise Jerome in the epistle to the Ephesians. It is necessary that, according to the diversities of the times, places, and persons to whom they were written, they should also have diverse causes, arguments, and origins. And just as blessed John, writing to seven churches in his Apocalypse, in each of them specially reproves vices or approves virtues, so also the holy Apostle Paul throughout the individual churches remedies the wounds that were inflicted and does not, in the fashion of an unskilled physician, wish to cure everyone's eyes with one eye salve.

Distinction XXX

GRATIAN. Part I. That which is read in the Canon of the Apostles, the Council of Gangra, and the Sixth Synod is considered according to cause and time. The cause was the heresy of the Manichaeans, which detested marriage, just as the superstition of certain others is also found to have introduced many things to the detestation of Catholics. Against them it is read that the following was established in the Council of Gangra:

C. I. Concerning the manifold superstition of the heretics whom the Council of Gangra anathematized.

[Council of Gangra, c. 16.] If any children abandon their parents, especially faithful parents, on the occasion of the worship of God, judging this to be just, and do not rather render the honor owed to their parents so that in them they may venerate this very fact, that they are faithful, let them be anathema.

C. II. Likewise concerning the same matter. [In the same, c. 17.]

Whatever woman, judging it fitting to religion, cuts off her own hair, which God gave her as a veil and as a reminder of her subjection, as though dissolving the law of subjection, let her be anathema.

C. III. Concerning the same matter. Likewise from the same [c. 14].

If any woman wishes to depart after abandoning her husband, with the bond of marriage dissolved, condemning marriage, let her be anathema.

C. IV. Concerning the same matter. Likewise from the same [c. 10].

If anyone who has professed virginity for God disparages through arrogance those placed in marriage, let him be anathema.

C. V. Likewise concerning the same matter. [In the same, c. 9.]

If anyone who has professed either virginity or continence judges marriage abominable and does not do so solely because the good of continence and virginity is a holy resolve, let him be anathema.

C. VI. Likewise concerning the same matter. [In the same, c. 13.]

If any woman, judging it useful for her resolve that she use masculine clothing, imitates a man's habit for this reason, let her be anathema.

C. VII. Likewise concerning the same matter. [In the same, c. 18.]

If anyone, judging this fitting to continence, fasts on the Lord's day in contempt of that day, let him be anathema.

C. VIII. Likewise concerning the same matter. [In the same, c. 19.]

If anyone among those who are in the resolve of continence is proud because of bodily necessity and thinks the common fasts are to be despised, judging the perfect principle of the whole Church to exist in his own conscience, let him be anathema.

C. IX. Likewise concerning the same matter. [In the same, c. 20.]

If anyone through pride, regarding himself as perfect, either accuses the assemblies that are held in various places and in the basilicas of the holy martyrs, or believes that the offerings celebrated there are to be spurned and the memorials of the saints despised, let him be anathema.

C. X. Likewise concerning the same matter. [In the same, c. 3.]

If anyone teaches that the house of God and the congregations that are held in it ought to be despised, let him be anathema.

C. XI. Likewise concerning the same matter. [In the same, c. 6.]

If anyone, gathering peoples privately outside the Church, despises ecclesiastical sanctions and conducts the Church among his own people with a priest but without the counsel of the bishop, let him be anathema.

C. XII. Likewise concerning the same matter. [In the same, c. 1.]

If anyone brings an accusation against marriage and believes that a faithful and religious woman sleeping with her husband is to be abominated or even accused, as though married persons could not enter the kingdom of God, let him be anathema.

C. XIII. Likewise concerning the same matter. [In the same, c. 2.]

If anyone believes that one who eats meat in faith and with religion—except blood, what is sacrificed to an idol, and what is strangled—is to be condemned as though one who eats it has no hope, let him

be anathema.

C. XIV. Likewise concerning the same matter. [In the same, c. 15.]

If anyone abandons his own children and does not nourish them and furnish them the necessities, as is the duty of piety, but thinks they are to be neglected on the occasion of continence, let him be anathema.

C. XV. Likewise concerning the same matter. [In the same, c. 12.]

If any man thinks it fitting to the holy resolve, that is, continence, that he use a cloak as though he will have righteousness from it, and reproves or judges others who with reverence use hooded cloaks and other common clothing that is in use, let him be anathema.

C. XVI. Likewise concerning the same matter. [In the same, final chapter.]

Part II. We have written these things not cutting off those who in the Church of God choose, according to the Scriptures, the holy resolve of continence, but those who assume its habit and are raised up in pride against those who live more simply. But we also condemn those who exalt themselves against the Scriptures and the ecclesiastical canons and introduce new precepts. We, however, both admire virginity with humility, and call continence with chastity and religion most acceptable to God; and, approving, we praise renunciations of secular affairs and acts with humility; and we honor the bond of marriage that endures according to chastity; and we do not cast out the rich who possess justice and good works.

C. XVII. One who follows the superstitions of the Manichaeans is anathematized.

Likewise from the Council of Pope Martin. If any priest, because of public penance received from a priest, fasts without any necessity on the Lord's day out of a certain religiosity, as the Manichaeans do, let him be anathema. §1. Likewise, as the ancient canon handed down by the Apostles maintains, it pleased the council that on every Sunday and on every day of Easter until the fiftieth day, they should not prostrate themselves in the prayer of humility, but with face upright should perform the office of prayer to the Lord, because on these days we celebrate the joy of the Lord's resurrection. If anyone also abstains from foods not for abstinence but from execration, it pleased the holy council that he should first taste them and then, if he wishes to abstain, abstain. But if he spurns them so that he does not taste vegetables cooked with meat, then, as one who is disobedient and does not remove from himself the suspicion of heresy, let him be deposed from the order of the clerical state.

Distinction XXXI

GRATIAN. Part I. As to the time: because it had not yet been instituted that priests should observe continence. Hence Gregory writes to Peter, subdeacon of Sicily [Book I, epistle 42]:

C. I. One who did not promise chastity is not to be compelled to separate from his wife.

Three years ago the subdeacons of all the churches of Sicily had been prohibited from mingling in any way with their wives, according to the custom of the Roman Church. This appears harsh and

unsuitable to me: that one who has not experienced the practice of continence and did not promise chastity should be compelled to separate from his wife and through this—which God forbid—fall into something worse. Hence it seems to me that from the present day all bishops should be told to presume to make no one a deacon unless he has promised that he will live chastely, so that past evils that were not sought by the resolve of the mind are not violently exacted, and future ones are cautiously guarded against. §1. But those who, after that prohibition made three years ago, have lived continently with their spouses are to be praised and rewarded, and exhorted to remain in their good practice. §2. Those, however, who after the prohibition was made were unwilling to abstain from their wives, we do not wish to be promoted to sacred order, because no one ought to approach the ministry of the altar unless his chastity has been approved before he receives the ministry. Part II. GRATIAN. The cause of this institution, however, was priestly purity, so that they could freely devote themselves to prayer on all days. For if, as the Apostle says, one must abstain from wives so that we may devote ourselves more readily to prayer, ministers of the altar, upon whom the daily necessity of prayer is incumbent, are consequently never permitted to devote themselves to the conjugal duty. Hence Bede says upon Luke [at c. 1]:

C. II. Priests are commanded always to observe chastity.

Priests are commanded always to abstain from their wives and always to observe chastity, so that they may always be able to assist at the altar.

C. III. Those who serve the divine sacraments ought to be continent.

Likewise in the Second Council of Carthage [c. 2]. It befits bishops, priests, and deacons, as it pleased the council, and it befits sacrosanct prelates or priests or Levites, or those who serve the divine sacraments, to be continent in all things.

C. IV. Priests and Levites are not to mingle with their wives.

Likewise Innocent I to Victricius, bishop of Rouen [epistle II, c. 9]. The Church ought to maintain in every way that priests and Levites do not mingle with their wives, because they are occupied by the necessities of daily ministry. For it is written: "Be holy, because I, the Lord your God, am holy." For in ancient times they did not depart from the temple in the year of their turn—as we read concerning Zechariah—and did not touch their home at all. The use of marriage had indeed been relaxed for them because of the succession of offspring, because no one from another tribe or from a stock other than that of Aaron was commanded to approach the priesthood. How much more ought these priests and Levites to observe modesty from the day of their ordination, for whom the priesthood or ministry exists without succession, and no day passes on which they are free either from divine sacrifices or the office of baptism?

[PALEA.

C. V. Likewise in the same place.

For as Paul writes to the Corinthians, saying, "Abstain for a time, so that you may devote yourselves to prayer," and he assuredly commanded this to laymen, much more will priests, for whom the sacrifice of prayer and sacrificing is continual, always have to abstain from intercourse of this kind.]

C. VI. Those who abstain from the duties of a wife are to be admitted to the sacrifices.

The same to Exsuperius, bishop of Toledo [epistle III, c. 1]. It is lawful for those to be admitted to the sacrifices who do not exercise the carnal duty even with a wife.

C. VII. A priest who must always pray must always abstain from marriage.

Likewise Jerome, *Against Jovinian* [Book I]. If a layman and every faithful person cannot pray unless he abstains from the conjugal duty, a priest, who must always offer sacrifices, must always pray; if he must always pray, he must therefore always abstain from marriage. GRATIAN. That the passage above concerning the marriage of priests was spoken because of the Manichaeans is apparent from the Council of Gangra, in which [c. 1] it is read that it was established thus:

C. VIII. Let one who disparages marriage be anathema.

If anyone disparages marriage and detests or considers blameworthy a faithful and religious woman sleeping with her husband, as though she could not enter the kingdom of God, let him be anathema.

C. IX. On the same matter.

Likewise from the same [c. 9]. Whoever, preserving virginity or devoting himself to continence, assumes the name of virginity as though shuddering at marriage, and not because it is good and holy, let him be anathema. Part III. GRATIAN. That which is read in the Canon of the Apostles can also be understood in another way, so that this is the meaning of the chapter: "If anyone teaches a priest to despise his wife," not a wife whom he received while in the priesthood, but one whom, while he was still a layman or established in the lesser orders, he joined to himself and with whom he professed continence when he ascended to sacred orders. No one ought to despise her, that is, cast her out of his mind and care, so that he does not provide her necessities. This interpretation is proved by the authority of Pope Leo, who, writing to Rusticus, bishop of Narbonne [epistle XC, c. 3], says:

C. X. The law of continence is the same for ministers of the altar, bishops, and priests.

The law of continence is the same for ministers of the altar as for bishops or priests, who, while they were laymen or readers, were lawfully able both to take wives and to beget children; but when they reached the aforesaid grades, what had been lawful began to be unlawful for them. Hence, so that a spiritual marriage may be made from a carnal one, it is fitting that they should not dismiss their wives, but that those who have wives should appear to possess them as though they did not, so that both the charity of the marriages may be preserved and the works of marriage cease.

C. XI. A bishop or priest is not to cast his own wife out of his care.

Likewise Leo IX, against the epistle of Abbot Nicetas. We confess altogether that a bishop, priest, or deacon is not permitted, for the sake of religion, to cast his own wife out of his care, but that he is to furnish her food and clothing, though not to lie with her carnally according to custom. Thus too we read that the holy Apostles acted, blessed Paul the Apostle saying: "Do we not have the power to lead about a woman who is a sister, as do the brother of the Lord and Cephas?" See, foolish man, that he did not say, "Do we not have the power to embrace a woman who is a sister?" but "to lead her about," namely so that by them she might be supported from the reward of preaching, yet thereafter

no further carnal union would exist between them. GRATIAN. Hence also that passage of Gregory in the *Dialogues*: "A certain priest"—look for it below. §1. Therefore, as appears from these authorities, priests can supply necessities to the wives whom, while in lay habit or established in the lesser orders, they lawfully joined to themselves, but cannot render the marital debt. Part IV. §2. But that passage of the *Tripartite History* is objected [Book II, c. 14]:

C. XII. At the persuasion of Paphnutius, the Nicene Synod did not establish that priests should not sleep with their wives.

The Nicene Synod, wishing to correct the life of men dwelling in the churches, set down laws that we call canons. In their discussion it seemed to certain persons that a law should be introduced so that bishops, priests, deacons, and subdeacons should not sleep with the spouses whom they had taken before consecration. But Paphnutius the confessor, rising, contradicted them; confessing marriage honorable and saying that intercourse with one's own spouse was chastity, he persuaded the council not to set down such a law, asserting that the matter was grave and would furnish an occasion of fornication either to them or to their wives. Paphnutius indeed explained this although he was inexperienced in marriage, and the synod praised his judgment and sanctioned nothing on this part, but permitted this to the will, not the necessity, of each person.

C. XIII. Priests are to abstain from the embrace of their wives not perpetually but at the time of oblation.

Likewise the Sixth Synod [c. 13]. Since we have learned that it is handed down in the order of the Roman canon that those who have been ordained deacons or priests profess that they are no longer to be joined to their wives, we, following the ancient canon of apostolic diligence and constitution, wish the lawful marriages of sacred men to remain valid henceforth, in no way dissolving their marriages with their wives or depriving them of familiarity with one another at an opportune time. Therefore, whoever is found worthy of ordination as subdeacon, deacon, or priest is in no way to be prohibited from ascending to such a grade because of cohabitation with his wife; nor are they to be compelled at the time of their ordination to profess that they ought to abstain from familiarity with a lawful wife. Likewise: §1. Those who minister at the altar ought to be continent in all things at the time of the oblation of the sacred things, so that they may be able to obtain from God the things they simply ask. §2. Therefore, if anyone has presumed, contrary to the apostolic canons, to deprive any priest or deacon of contact and communion with his lawful wife, let him be deposed. §3. Likewise, let a priest or deacon who casts out his wife for the sake of religion be excommunicated; but if he persists in this, let him be deposed. GRATIAN. This, however, is to be understood according to place. For the eastern Church, for which the Sixth Synod prescribed the rule of living, did not receive a vow of chastity among ministers of the altar. Hence Pope Stephen says [in the first action of the synod gathered by him in the Lateran Basilica]:

C. XIV. The western, not the eastern Church offered the vow of chastity.

Part V. The tradition of the eastern churches is one thing, and that of this holy Roman Church another. For their priests, deacons, and subdeacons are joined in marriage; but in this Church, or among the western churches, no priest from subdeacon up to bishop has license to obtain marriage. Part VI. GRATIAN. Likewise, the chapter of Nicholas is considered according to place, because the nation of the Bulgarians, newly converted to the faith, had not yet learned to assume in its entirety

the resolve of sacred religion. §1. As for the fact that in c. 6 of the synod a priest held in unlawful marriage is punished, second marriages are to be understood as unlawful, from which every priest ought by canonical authority to be immune. That passage of the Council of Gangra, however—"If anyone makes a distinction against a married priest," etc.—is similarly to be understood either as handed down locally or as calling him married by the woman whom he had taken before the time of his ordination. §2. That passage of Pope Martin too—"If a subdeacon takes a second wife"—is to be understood no differently. For he is permitted to have a first wife before the subdiaconate, and after she has died or professed chastity, he is promoted to the subdiaconate. But after being promoted, if he desires a second marriage, he will be subject to the sentence of Pope Martin.

Distinction XXXII

GRATIAN. Part I. Continence is therefore to be observed by all established in sacred orders. Hence Pope Leo [to Anastasius, epistle LXXXII, cc. 3 and 4] says:

C. I. Carnal marriage is not conceded even to subdeacons.

Since the selection of priests is so excellent that those things which in other members of the Church are not accounted as fault are nevertheless held illicit in them. For although it is free for those established outside the order of clerics to devote themselves to the partnership of marriage and the procreation of children, nevertheless, for displaying the purity of perfect continence, not even carnal marriage is conceded to subdeacons, so that both those who have wives may be as though not having them, and those who do not have wives may remain single. If it is worthy that this be guarded in this order, which is fourth from the head, how much more is it to be observed in the first, second, or third, lest anyone should be considered suitable either for Levitical or priestly honor or for episcopal excellence who is discovered not yet to have restrained himself from the pleasure of lust.

[PALEA.

C. II. Likewise Gregory to Leo, bishop of Catania, Book III, epistle 34.

We have learned from the report of many that this custom was maintained among you long ago, that subdeacons lawfully mingled with their wives. Lest anyone presume this again, it was prohibited in this manner by Servusdei, deacon of our see, by the authority of our predecessor: that at that time those who had already been joined to wives should choose one of two things, that is, either abstain from their wives or certainly in no way presume to minister. And as is said, Speciosus, then a subdeacon, on account of this matter suspended himself from the office of administration and, until the time of his death, indeed discharged the office of notary and ceased from the ministry that a subdeacon ought to have displayed. And after some things: §1. But henceforth let your fraternity be altogether solicitous that, concerning those who happen now to be promoted to this office, it especially inspects this diligently, lest, if they have wives, they obtain license to mingle with them; but let it establish by its own strictness that, after the likeness of the apostolic see, they are nevertheless to observe all things.]

C. III. Those established outside sacred orders are to take wives and receive stipends from the Church.

Likewise Gregory to Augustine, bishop of the English [c. 2, to the second question]. But if there are any clerics established outside sacred orders who cannot remain continent, they ought to take wives and receive their stipends outside, because we also know it to have been written concerning those same fathers that it was divided to each one according as each had need. Therefore thought and provision are to be made concerning their stipend, and they are to be held under the ecclesiastical rule so that they may live with good morals, be vigilant in singing psalms, and, with God as author, preserve heart, tongue, and body from all illicit things.

C. IV. A subdeacon is not permitted to take a wife.

Likewise Pope Nicholas [I] to Ado, archbishop of Vienne. Concerning that cleric named Alwic, whom you say lived through the ecclesiastical orders as far as the subdiaconate, we wonder why by your authority he took a wife, since we grant no one license to take a wife, except those whom the ecclesiastical rule permits to have one.

C. V. The Mass of a priest having a concubine is not to be heard.

Likewise Pope Nicholas [II] to all bishops. Part II. Let no one hear the Mass of a priest whom he knows undoubtedly to have a concubine or a woman secretly introduced. Hence the holy synod itself also established this chapter under excommunication, saying: "Whoever of the priests or deacons," etc., as is contained in the following c. of Alexander [II].

C. VI. The Mass of a priest who has a concubine is not to be heard.

Likewise Alexander II. Beyond this, however, we command by precept that no one hear the Mass of a priest whom he knows undoubtedly to have a concubine or a woman secretly introduced. Hence the holy synod also established the following from its beginning under excommunication, saying: §1. Whoever among priests, deacons, or subdeacons, after the enactment of our predecessor of blessed memory, holy Pope Leo or Nicholas, concerning the chastity of clerics, has openly taken a concubine or has not abandoned one already taken, by the authority of almighty God and the authority of the princes of the Apostles Peter and Paul, we command and altogether prohibit him from singing Mass, reading the Gospel, or reading the Epistle at Mass; from remaining in the presbytery for the divine offices with those who have obeyed the aforesaid enactment; and from receiving a portion from the Church. §2. We also command and establish that those of the aforesaid orders who, obeying these our predecessors, have preserved chastity are, beside the churches as befits religious clerics, to eat and sleep together and to possess in common whatever is due to them from the Church. Then, that tithes and first fruits or offerings of the living and dead are faithfully to be rendered to the churches of God by laymen, and are to be in the disposition of the bishops; those who retain them are to be separated from the communion of the holy Church. Part III. GRATIAN. Yet the beginnings of these authorities appear to contradict Jerome, Augustine, and the others who demonstrate that the sacraments of Christ are to be shunned neither in a good nor in an evil man, as the following causa concerning simoniacs shows more fully. But Urban II, in an epistle sent to the provost of Saint Vincent, determines this contradiction, saying: §1. As to what is added in the same epistle, namely whether ordinations and the other sacraments displayed by criminals, as by adulterers, violators of

religious women, or persons of this kind, are to be used, to this, I say, we reply: If they are not separated from the Church by schism or heresy, we do not deny that their ordinations and other sacraments are holy and venerable, following blessed Augustine, who upon John discusses persons of this kind as copiously as truthfully. For he says: "A good servant baptizes or an evil servant baptizes; let the one who is baptized know himself to be baptized by no one except him who gave that servant the power of baptizing." And a little afterward: "Let the dove not shudder at the ministry of evil men; let it look to the Lord's power." §2. Nevertheless our predecessors Nicholas and Gregory decreed that the faithful should abstain from the Masses of priests who are established truly to be such persons, both to take away from others the license of sinning and to recall persons of this kind to the lamentations of worthy penance. For our predecessor Gregory writes, among other things, to the dukes Rudolf and Berthold: "Knowingly receive in no way the office of simoniacs and of those lying in fornication, and, insofar as you can, prohibit such persons from the sacred ministries, as may be fitting," etc. §4. Further, as to these things that are objected to you syllogistically in the same epistle —if they are not the body and blood of Christ, and if the other things we said before do not have the effect of their power, how do they harm those performing them? But if they have it, why are they spurned if they are presumed by the unworthy?—to these things, I say, we reply thus: They indeed possess the dignities of their own power, as the aforesaid Augustine says upon John against the Donatists; but those same sacraments so greatly harm those performing or receiving them contrary to the enactments of the aforesaid pontiffs—unless perhaps death alone intervenes, namely lest anyone depart from human affairs without baptism or communion—that, I say, they are true idolaters, since both the confection of ordinations and sacraments with such persons and their knowing reception otherwise than was set forth above are vehemently prohibited by the holy canons. For Samuel the prophet says: "For to resist is as the sin of divination, and to be unwilling to acquiesce is like the crime of idolatry." These things concern evil Catholics who are within the Church. §4. But we profess that the sacraments of schismatics and heretics, since they are outside the Church, according to the traditions of the holy fathers—namely Pelagius, Gregory, Cyprian, Augustine, and Jerome—indeed have the form of sacraments but not the effect of their power, unless they themselves, or those initiated by their sacraments, return to Catholic unity through the imposition of a hand. It is to be known, however, that the canons of the Apostles—whose authority the eastern Church uses, and the Roman Church in part—and the distinguished martyr Cyprian and eighty bishops with him call the baptism of heretics the bath of the devil. But Stephen and Cornelius, martyrs and Roman pontiffs, and the venerable Augustine in the book *On Baptism* vehemently reprove the same Cyprian and the aforesaid bishops for this cause, affirming that baptism celebrated in the ecclesiastical manner, whether by a heretic or schismatic, is valid; and deservedly, because there is one consideration in baptism and another in the remaining sacraments, since it is both prior in order and more necessary. For one who is about to die suddenly is aided by baptism before the communion of the Lord's body or the other sacraments, and when perhaps no Catholic is found, it is better to receive the sacrament of baptism from a heretic than to perish eternally. Siricius, Innocent, Leo, Anastasius, Gregory the Great, and the whole Catholic Church followed this judgment of the aforesaid pontiffs Cornelius and Stephen and of Augustine. Part IV. §5. Therefore the reception of sacraments from the hands of such priests is prohibited, not because they are not true as to form and effect, but because, when priests of this kind see themselves despised by the people, they are more readily provoked to penance by the blush of shame.

C. VII. One who wishes to take a wife is to do this before the order of the subdiaconate.

Likewise from the Sixth Synod [c. 6]. If anyone among those who approach the clergy wishes to be joined to a woman by the law of marriage, let him do this before the order of the subdiaconate.

C. VIII. Readers are either to take wives or to profess continence.

Likewise from the Third Council of Carthage [c. 19]. When readers reach the years of puberty, let them be compelled either to take wives or to profess continence.

C. IX. Subdeacons ought to observe continence.

Likewise Gregory to Boniface, bishop of Reggio [Book III, epistle 5]. We have decreed that this which we established concerning the individual subdeacons is to be observed by your subdeacons; nor are you to permit that determination of ours to be corrupted by anyone's contumacy or rashness.

C. X. Those who devote themselves to wives after the diaconate are to lack benefice and office.

Likewise Urban II in the Synod at Melfi [c. 12]. We remove from every sacred order those who after the diaconate have wished to devote themselves to wives, and decree that they are to lack the office and benefice of the Church. But if, after being admonished by the bishop, they do not correct themselves, we grant license to princes to subject their women to servitude. If, however, the bishops consent to their depravities, let them themselves be punished by interdiction from office.

C. XI. Subdeacons and those above them, if they are unwilling to be continent, are to be excluded from the dignity of their grades.

Likewise to Dominicus, patriarch of Grado. Let the impious blush and understand openly that, by the judgment of the Holy Spirit, those who, placed in the three sacred grades—priesthood, diaconate, and subdiaconate—have not cast off their women and have not lived chastely are to be excluded from the dignity of those grades. We indeed speak concerning manifest things; God, however, is the knower and judge of secret things. The same, presiding over the Synod of Meaux, says [c. 3]:

C. XII. Let no one approach sacred orders unless a virgin or of proved chastity.

Let no one be permitted to approach sacred order unless either a virgin or of proved chastity, and one who up to the subdiaconate had one wife and a virgin.

C. XIII. Those established in the three grades are to abstain even from their wives.

Likewise in the Council of Carthage [V, c. 3]. It pleased the council that bishops, priests, deacons, and subdeacons, according to the preceding enactments, are to abstain even from their wives; and unless they do so, let them be removed from ecclesiastical office. But the other clerics are not to be compelled to this, and the custom of each church ought to be observed.

C. XIV. Those established in the lesser orders may take wives unless they are prohibited by a vow and religious habit.

Likewise Leo [IX], against the epistle of Abbot Nicetas. Let us set forth in order and openly what the holy Roman Church says concerning the grades of clerics. It permits clerical ostiaries, readers, exorcists, and acolytes, if they are found outside a vow and the habit of a monk and are unwilling to profess continence, to take a virgin as wife with a priestly blessing, but not a widow or a repudiated woman, because on account of this they will thereafter be unable to be advanced to the subdiaconate. Nor can a layman, unless he has obtained a virgin as wife, or a twice-married man, be advanced to the clerical state; nor, if any of the aforesaid orders desires it, can he ascend to the subdiaconate without the consent of his wife, so that thereafter a spiritual marriage may be made from the carnal one, with no one compelling them. Nor is the wife afterward permitted to be joined carnally to the same husband or to marry anyone during his life or after his death.

C. XV. Clerics are not permitted to take a wife of another sect.

Likewise from the Council of Chalcedon [c. 14]. Since in certain provinces it is conceded to readers and psalmists to take wives, the holy synod established that none of them is permitted to take a wife of another sect.

C. XVI. Women are not to dwell with clerics unless by a natural bond they exclude all suspicion.

Likewise from the Council of Nicaea [c. 3]. Part V. The holy synod entirely prohibited a bishop, priest, deacon, subdeacon, or absolutely anyone who is in the clergy from being permitted to have a woman secretly introduced, unless perhaps a mother, sister, paternal aunt, or also those suitable persons who escape suspicion.

[PALEA.

C. XVII. Likewise Jerome to Nepotian concerning the life of clerics, and elsewhere.

Let the feet of women tread your little lodging either rarely or never. §1. One who is joined to the visits of women cannot dwell with God with his whole heart. §2. A woman burns the conscience of the one dwelling together with her. §3. Never discuss the beauty of women. §4. Let women know your name; let them not know your face. §5. Love in your mind a woman whom you have seen conducting herself well, not by bodily frequentation. §6. If it is good not to touch a woman, it is therefore evil to touch one.]

C. XVIII. Let a priest love his wife as a sister and flee her as an enemy.

Likewise Gregory in Book IV of the *Dialogues* [c. 2]. A certain priest governed the church committed to him with great fear of the Lord. From the time he received his order, loving his *presbytera* as a sister but guarding against her as an enemy, he did not permit her to approach him more closely; permitting her to draw near him on no occasion, he utterly cut off from her the communion of familiarity with himself. GRATIAN. The Council of Laodicea [c. 11] shows whom we ought to understand as a *presbytera*, saying:

C. XIX. Widows or elder women are called *presbyterae*.

Women who among the Greeks are called *presbyterae*, but among us are called widows, elder women, women of one husband, and matriculariae, ought not to be established in the Church as though ordained.

Distinction XXXIII

GRATIAN. Part I. Behold: those established in sacred orders cannot have wives, or if any are found twice-married, they cannot ascend to sacred orders. But it is asked whether one who has had a concubine besides a wife can be promoted to the priesthood. Such a person is prohibited from sacred orders by the authority of the Canons of the Apostles, in which [c. 17] it is read that it was established thus:

C. I. One joined to a second marriage after baptism, or having a concubine, cannot ascend to sacred order.

If anyone after receiving sacred baptism has been joined to a second marriage or has had a concubine, he cannot be made a bishop, priest, or deacon, or be at all from the number of those who serve in the sacred ministry. GRATIAN. Those serving in the sacred ministry are understood to be subdeacons, who offer the chalice to the deacon, and acolytes, who precede deacons with candles, from which they are called candle-bearers, and who also minister to the chalice by preparing wine and water. A concubine is to be understood as in addition to a wife, so that this is the meaning of the chapter: "If anyone after receiving sacred baptism has been joined to a second marriage or has had a concubine"; a distinction is to be made whether it was before he took a wife or after the death of his wife. Hence blessed Gregory says:

C. II. The husband of two matrons after baptism is not to be ordained a cleric.

We have judged that the husband of two matrons after baptism is not to be ordained a cleric; nor one who took one concubine or prostitute in marriage; nor one who, cutting himself, mutilated any member when overcome by some anger or by a just or unjust course; nor those who are convicted of having received usury or are known to have acted on the stage; nor one who bewailed mortal crimes by public penance; nor one who, having at some time been turned to fury, became insane or was tormented by diabolical affliction; nor one who, through purchase in imitation of Simon Magus, offered money.

C. III. Demoniacs or epileptics are not to minister at the sacred altars.

Likewise Pope Pius. Part II. We define in common that none of those who either are dashed to the ground when seized by demons or are carried away in any manner by the assaults of an affliction may dare to minister at the sacred altars or thrust themselves without examination into the divine sacraments. An exception is made for those who, given over to bodily infirmity without passions of this kind, are proved to have been dashed to the ground; yet they too will be suspended from their office, order, and place until, over the space of one year, by the discernment of the bishop they are found to have been freed from the assault of demons.

C. IV. On the same matter.

Likewise Pope Nicholas. Clerics who are known to have been possessed by demons in adolescence cannot approach a higher grade of sacred governance.

C. V. On the same matter.

Likewise Pope Gelasius [I, epistle to all the bishops established throughout Lucania, 19]. We have indeed learned that all manner of illicit things burst forth to such a degree there that it is granted to those ensnared by demons and similar passions to handle the sacrosanct ministries. If, while they are placed in this work, something of their own necessity occurs to them, which of the faithful trusts in his salvation when he has seen the ministers themselves of human healing tormented by so great a calamity? And therefore they must necessarily be removed, lest scandal be generated for any of the weak for whom Christ died. Finally, if divine law by no means permitted one wounded or perhaps disabled in body to touch the sacred things, how much more is it unfitting for those struck in mind—which is worse—to be dispensers of the heavenly gift?

C. VI. Those who have wives at the time of baptism are not prohibited from becoming clerics if they afterward live religiously.

Likewise Pope Innocent [I to Felix, bishop of Nocera, epistle IV, c. 4]. Part III. Laymen who were baptized while having wives and so established themselves that their reputation wavers in no respect, or who were joined to clerics or adhered to monasteries from the time they were baptized, if they have known neither a concubine nor a mistress and have been vigilant in good works, persons of this kind are not prohibited from being assumed to the lot of the clerical state. Part IV. GRATIAN. But we read that certain persons had a concubine before receiving sacred order, whom the sacred canons nevertheless do not reject if after sacred order they preserve themselves unstained from intercourse with her. Hence Gregory to Andrew, bishop of Taranto [Book II, epistle 44]:

C. VII. Concerning a certain bishop who had a concubine before the summit of his episcopate.

We have learned by manifest truth that you had a concubine and that you have participation in that crime, concerning which even a contrary suspicion has arisen among certain persons. But because judgment ought not to be absolute in ambiguous matters, we choose to commit this to your conscience. For this reason, if you recall that, while established in sacred order, you were stained by intercourse with her, after laying aside the honor of the priesthood, presume in no way to approach to minister. Know that you minister at the peril of your soul and will without doubt render an account to our God if, conscious of this crime, you wish to remain in the order in which you are by concealing the truth.

Distinction XXXIV

GRATIAN. Part I. A bishop ought also to avoid immoderate familiarity with persons of his household. Hence Pope Nicholas to Archbishop Adalwin:

C. I. A bishop ought to avoid immoderate familiarity even with female blood relatives.

It has been intimated to our ears by the report of certain faithful persons that Bishop Lanfred, who is also said to be young, is devoted to hunting. This vice entangles very many even from the clerical catalogue—Germans and Gauls, namely—in irreverence. But this man, if the matter is as we have heard, is deservedly called young, because, occupied by youthful desires, he is restrained by no gravity. For, as blessed Jerome says, we never read of a hunter who was holy. It has likewise been reported to our apostolate concerning this bishop that he maintains immoderate familiarity with a certain daughter of his and that an evil reputation has arisen against him on this account. For this matter he has been admonished and reproved by your holiness and his other fellow bishops, but has in no way amended himself. This matter is especially displeasing in this respect and renders the opinion concerning him worse and worse: that he does not obey the reasonings of your blessedness and his fellow bishops and through disobedience falls back into the fault of the first-created man. §1. Your fraternity therefore ought to summon a synodal council with your bishops and suffragans, address this bishop with salutary words, and command him by pastoral authority to remain entirely alien from hunting any beasts or birds and altogether restrain himself from immoderate familiarity with his daughter. But if he disdains to obey and, when you admonish him both to renounce hunting and to avoid immoderate association with his daughter, delays obedience, let him depart excommunicated from your college.

But if he still appears contumacious in this, he will have to cease from the ministry.

[PALEA.

C. II. From the Council of Epaon, c. 4.

A bishop, priest, or deacon is not permitted to have dogs for hunting, hawks, or things of this kind. But if anyone among such persons has been detained repeatedly in this pleasure, if he is a bishop, let him be suspended from communion for three months; but let a deacon be suspended from every office and from communion.]

[PALEA.

C. III.

We prohibit all servants of God from hunts and woodland wanderings with dogs and from having hawks or falcons.] Part II. GRATIAN. A concubine here, however, is understood as a woman who, in the absence of legal instruments, has been united and is taken with marital affection; affection makes her a spouse, while the law names her a concubine. Concerning her it is said in the Council of Toledo [I, c. 17]:

C. IV. One who does not have a wife is permitted to have a concubine in her place.

One who does not have a wife and has a concubine in place of a wife is not to be repelled from communion, provided that he is content with union with one woman, either a wife or a concubine.

C. V. On the same matter.

Likewise Isidore, *On the Difference of the Old and New Testaments*. A Christian is permitted to have, I shall not say many women, but not even two at the same time; only one wife, or certainly in place of a wife, if a spouse is lacking, one concubine.

[PALEA.

C. VI. From the sayings of Augustine in Book VII of the *Homilies*, homily 49.

Hear, most beloved members of Christ and sons of mother Catholic Church! Let penitents hear what I say to the competent and faithful. What I say to the faithful I say also to the competent and the penitents. Let the catechumens hear; let all hear; let all fear; let no one despise it. Let your hearing be a consolation to me, lest my grief be a testimony against you. I say to the competent: you are not permitted to fornicate; let your wives suffice for you. Let God hear if you are deaf; let the angels hear if you despise it. You are not permitted to have concubines; and if you do not have wives, you will nevertheless not be permitted to have concubines whom you afterward dismiss and take wives. So much greater will your condemnation be if you wish to have wives and concubines.]

Part III. GRATIAN. But if she was not a concubine of this kind and the age of the man in question is recognized to remove the suspicion of future incontinence, by apostolic concession he can be advanced to the order of the diaconate. Hence Pope Pelagius writes to Bishop Florentinus:

C. VII. One who had children by a female slave after the death of his wife is permitted to become a deacon.

Having received the report of your fraternity, we learned that the bearer of it had indeed not experienced a second marriage, yet you indicated that he had not preserved chastity toward his former marriage. And although there are many things that the authority of canonical sublimity commands to be observed in cases of this kind, nevertheless, because the deficiency of our time, in which not only the merits but the very bodies of men have failed, does not permit the censure of that strictness to remain, and the age of the man in question is recognized to remove the suspicion of future incontinence, know that we have conceded that he can be advanced to the order of the diaconate. §1. But we command that Micina, his female slave, by whom he confessed that he had children after the passing of his wife, be handed over under your direction to any monastery to profess continence. GRATIAN. This is from a dispensation of mercy; but that passage of the Council of Orléans is understood from the rigor of discipline:

C. VIII. One who has known another woman besides his wife is not to be admitted to the clergy.

If any layman after his wife has known another woman of any condition, let him in no way be admitted to the clergy. Part IV. GRATIAN. Therefore, what is written concerning a mistress and prostitute in Gregory and Innocent is believed to have been established because of the expectation of future incontinence, because one who does not fear to stain himself by illicit intercourse preserves continence with difficulty. Or one who has known a mistress or prostitute with marital affection is prohibited from being ordained, either because, having been corrupted, she had lost the flower of virginity, or because she does not cease to prostitute herself although she is taken as wife. For either

impediment prevents anyone from being able to attain sacred orders. Hence Pope Hilary [in the Roman Synod, c. 2] writes, saying:

C. IX. One who did not take a virgin as wife is not to approach sacred orders.

Care is therefore first to be taken that no one who did not take a virgin as wife should aspire to sacred orders, as was prescribed above in the earlier acts.

C. X. A twice-married man, a penitent, one impaired in body, one ignorant of letters, or one bound to the curia or to a condition is not to be made a cleric.

Likewise Gregory, prelate of the city of Rome, to the bishop of Squillace [Book II, epistle 25]. We command you never to perform illicit ordinations or permit a twice-married man, one who did not obtain a virgin as wife, one ignorant of letters, one impaired in any part of the body, a penitent, or one bound to the curia or to any condition to approach sacred orders. But if you find any persons of this kind, do not dare to promote them.

C. XI. One whose wife is plainly established to have committed adultery is not to be made a priest.

Likewise in the Council of Neocaesarea [c. 8]. If anyone's wife is plainly proved to have committed adultery while he was a layman, he cannot be admitted to ecclesiastical ministry. But if she committed adultery when he was already established in the clerical state, he ought to dismiss her after giving a repudiation. But if he wishes to retain her companionship, he cannot enjoy the ministry he received.

C. XII. On the same matter.

Likewise from the Council of Pope Martin. If the wife of a layman has been caught in adultery, a man of this kind is in no way to be brought to ecclesiastical ministry. But if the wife of any cleric commits adultery after his ordination, let him dismiss her. If, however, he wishes to remain with her, let him be excluded from the ministry. GRATIAN. By the foregoing authorities, twice-married men and those who did not obtain virgins as wives are prohibited from sacred orders. But it is asked: if anyone before baptism took a widow as wife, is he on that account to be prohibited from sacred orders? Concerning these things Pope Innocent writes thus to Victricius, bishop of Rouen [epistle II, cc. 5 and 6]:

C. XIII. One who took a widow as wife, whether before or after baptism, is not to be admitted to the clergy.

If anyone, although a layman, took a widow as wife, whether before baptism or after baptism, let him not be admitted to the clergy, because he appears excluded by the same defect. For crimes are forgiven in baptism; the partnership of a wife already received is not relaxed. §1. But if the woman taken before baptism is not thought to be counted as a wife, then neither are the children begotten before baptism to be held as children. GRATIAN. Twice-married men are also prohibited from every order of the clerical state, according to that passage of Ambrose [epistle LXXXII] to the people of Vercelli:

C. XIV. One who obtains a second marriage is not to become a cleric.

Let us recognize that not only did the Apostle establish this concerning a bishop and priest, but the fathers also added in the deliberation of the Nicene Council that no one who had obtained a second marriage ought to be a cleric. Part V. GRATIAN. Likewise, husbands of widows, female slaves, or prostitutes cannot become clerics. Hence it is read in the Canons of the Apostles [c. 18]:

C. XV. One who takes as wife a woman bound to public spectacles, a woman cast out, or a female slave is not to become a deacon.

If anyone receives a widow or a woman cast out, or a prostitute, or a female slave, or any one of those who are bound to public spectacles, he cannot be a bishop, priest, or deacon, or from the number of those who serve in the sacred ministry. Part VI. GRATIAN. Jerome [epistle CXXVIII] to Fabiola, *On the Priestly Vestment*, shows who is a widow, a woman cast out, or a prostitute, saying:

C. XVI. Who is a widow, a woman cast out, or a prostitute.

A widow is one whose husband has died. A woman cast out is one who is expelled while her husband is living. A prostitute is one who lies open to the lust of many. Part VII. GRATIAN. But afterward, condescending to the deficiency of the times, Pope Martin permitted them to be established in the lesser orders, saying:

C. XVII. A subdeacon who takes a second wife is to be numbered among readers or ostiaries.

If a subdeacon takes a second wife, let him be held among readers or ostiaries, yet so that he does not read the Apostle. GRATIAN. Nevertheless, when necessity requires, twice-married men can be promoted as far as the subdiaconate.

Hence Pope Martin says:

C. XVIII. One who takes a widow as wife can become a subdeacon.

If a reader takes the widow of another as wife, let him remain in the readership, or, if there is necessity, let him become a subdeacon, but nothing above it. Likewise also if he is twice-married. Part VIII. GRATIAN. Those who are prohibited from their own marriages are also forbidden to be present at wedding banquets. Hence it is read in the Council of Agde [c. 39]:

C. XIX. Priests ought not to be present at wedding banquets.

Priests, deacons, subdeacons, or those thereafter who do not have license to take wives are also to avoid the banquets of others' weddings and not mingle with those assemblies where amorous and shameful songs are sung or obscene movements of bodies are displayed in choruses and dances, lest hearing and sight deputed to the sacred mysteries be polluted by the contagion of shameful spectacles and words. Part IX. GRATIAN. A widow, however, is to be understood as one who after the solemn covenant of marriage was separated from her husband by the intervention of death. But if before they come together they are divided from one another by fatal necessity, although she is called a wife by reason of the betrothal, nevertheless after the death of the betrothed she is not called a widow, even if she was led into his house and veiled with him; nor is anyone prohibited from sacred orders by union with her. Hence Pope Pelagius writes:

C. XX. One who took as wife a woman veiled with another but not married to him is not prohibited from becoming a priest.

Let no obstacle be generated in promoting the cleric Valentinus, to whom a woman who was previously veiled with another but not married to him, and who remained a virgin, was joined by a conjugal bond after the death of the betrothed with whom she had been veiled, because she received the veil a second time; for, insofar as pertains to this article, there is nothing in the canonical enactments that stands against him.

Distinction XXXV

GRATIAN. Part I. From which orders twice-married men are prohibited, whether those who had one wife before baptism and another after baptism are reckoned twice-married, and whether those established in sacred orders are permitted to obtain wives have been shown briefly by many authorities. §1. There follows in that apostolic description that one who is to be ordained is to "be sober," "not given to wine," which was introduced from the authority of the Old Testament. For ministers of the temple are prohibited from freely drinking wine and strong drink, lest their hearts be weighed down by drunkenness, so that their sense may always be vigorous and subtle, or because a belly heated with wine quickly foams forth into lusts. Hence Noah in drunkenness bared his thighs; wines conquered Lot, whom Sodom did not conquer. §2. The prohibition against being given to wine is to be understood not as being filled with wine once, but frequently. Hence it is also read in the Canons of the Apostles [canons 43 and 42]:

C. I. A deacon, priest, or bishop serving drunkenness and gambling, unless they desist, are to be deposed.

Let a bishop, priest, or deacon serving gambling and drunkenness either desist or certainly be condemned. But let a subdeacon, reader, or singer doing similar things either desist or be deprived of communion. Likewise also a layman.

C. II. The eating of meat and drinking of wine are read to have been conceded after the flood and inhibited after the coming of Christ.

Likewise Jerome [Book I, *Against Jovinian*]. From the beginning of the creation of the human race, we neither fed upon meats, gave a repudiation, nor had our foreskins taken from us as a sign, and by this course we arrived at the flood. But after the flood, together with a giving that no one could fulfill, meats were offered to be eaten, the hardness of repudiation was conceded, and the knife of circumcision was applied, as though God's gift had created in us more than was necessary. But after Christ came at the end of the times and the Omega revealed the Alpha—that is, drew the end back to the beginning—we are neither permitted to give a repudiation, are circumcised, nor eat meats, the Apostle saying: "It is good not to drink wine and not to eat meat." For wine together with meats was dedicated after the flood.

C. III. It is alien to a wise man to devote himself to drinking bouts and drunkenness.

Likewise from the epistles of the same. Wine is a luxurious thing and drunkenness full of reproach; but everyone who mingles with these will not be wise.

C. IV. It is ignominious for a priest to abound in delicacies.

The same, on the prophet Micah [at c. 2]. The prophetic discourse describes the princes of the Church who abound in delicacies and believe that they preserve modesty amid feasts and wanton pleasures, "that they are to be cast out of spacious houses, sumptuous banquets, and foods sought with great labor because of their evil thoughts and works." And if you wish to know where they are to be cast, read the Gospel: "into the outer darkness, namely, where there will be weeping and gnashing of teeth." Is it not confusion and ignominy to preach Jesus crucified, poor and hungry, with stuffed bodies? And to bring forth the doctrine of fasts with reddened cheeks and swollen faces? If we are in the place of the Apostles, let us imitate not only their discourse but their manner of life and abstinence.

[PALEA.

C. V. On the same matter.

The same to Oceanus, epistle 83. A belly heated with wine quickly foams forth into lusts. Where drunkenness is, there lust and fury rule.]

[PALEA.

C. VI. On the same matter.

The same to Nepotian, *On the Life of Clerics*. Both the Apostle condemns a priest given to wine and the old law prohibits one. Priests who minister in the temple of God are prohibited from drinking wine and strong drink, lest their hearts be weighed down in surfeiting and drunkenness. In the Hebrew language every drink that can intoxicate is named strong drink. And below: Flee whatever intoxicates and overturns the state of the mind, just as you flee wine. "Do not," says the Apostle, "be drunk with wine, wherein is luxury." And above: Let those who serve the altar not drink wine and strong drink. Let the bride of Christ flee wine as poison. Wine and drunkenness are a conflagration.]

[PALEA.

C. VII. On the same matter.

Likewise Prosper, *On the Contemplative Life*, Book II, c. 22. It is excessive reception of wine, not its nature, that causes and nourishes luxury.]

C. VIII. In paradise there was abstinence; after paradise the wantonness of eating began.

Likewise Ambrose in the sermon *On Fasting*. The divine oracle resounds toward the Father. On the sixth day beasts were created, and with the beasts arose the power of eating and the use of foods. Where food began, there the end of the world was made. Where it began not to know its own increases, there the divine works concerning it began to cease. By this sign it was declared that the world would be diminished through those foods through which it ceased to be increased. And below: §1. That we may know fasting is not new, he established there the first law concerning fasting. And below: Up to that point no one had known how to transgress, since the first transgression had not yet arisen. Fasting was enjoined, a law of abstinence by the Lord God; transgression of the law by the devil; fault through food, a hiding place after food; knowledge of infirmity in food, the virtue of

strength in fasting. The serpent counsels gluttony; the Lord determines fasting. Thus gluttony expelled the one reigning in paradise; abstinence recalled the wandering one to paradise. And below: §2. At the beginning of the human race drunkenness was unknown. Noah first planted a vineyard; he gave it nature but did not know its power. Thus wine did not spare even its own author. But his drunkenness counsels sobriety to us. For Noah was intoxicated once. When he recognized the evil of drunkenness, he moderated his beast for a remedy; he did not pour it out for vice. §3. Before wine was discovered, however, liberty remained unshaken for all; no one knew how to exact the obedience of servitude from a sharer of his own nature. Envy of a brother's precedence had indeed already crept in, yet reverence for paternal piety still remained. Piety was injured when drunkenness was mocked. Therefore wines harm not only those whom they tempt, but even more those before whose eyes the drunken members of intoxicated persons are bared. And below: §4. We also read that Lot's daughters intoxicated their father on the mountain to which they had fled in fear of the conflagration of the Sodomites, and they dwelt in a cave. §5. Thus drunkenness was the origin of incest, the worse offspring of a most wicked mother. §6. But Abraham did not minister wines at his banquet; rather, he sacrificed a calf and displayed butter and milk even to his angelic guests. Rightly, indeed, was the material of sin absent where there was remission of sins. Finally, John announced the Lord, "neither eating bread nor drinking wine." For one who announces Christ ought to keep himself alien from every incentive of vices.

C. IX. A cleric who is established to have been drunk is to abstain from communion for thirty days.

Likewise from the Council of Agde [c. 41]. Before all things drunkenness, which is the kindling and nurse of all vices, is to be forbidden to clerics. Therefore one who is established to have been drunk is either to be removed from communion for the space of thirty days, as his order permits, or subjected to corporal punishment.

Distinction XXXVI

GRATIAN. Part I. One who is to be ordained must also be prudent. This is to be noted against those who excuse the foolishness of priests under the name of simplicity. A bishop ought to be understood as prudent not only in skill in letters but also in the administration of secular affairs. Hence in the epistle of Pope Gelasius [to the bishops throughout Lucania, c. 18]:

C. I. The illiterate and those impaired in body are not to be promoted to the clergy.

Let no one presume to promote to the clergy the illiterate or those diminished in any part of the body, because one lacking sacred letters cannot be fit for sacred offices, and the precepts of the law sanctioned that absolutely nothing defective is to be offered to God. §1. Likewise those who cut themselves.

C. II. Let one who is not instructed for divine service not aspire to the supreme priesthood.

Likewise Pope Zosimus [epistle to Hesychius, bishop of Salona]. Let one who has not been imbued in order with ecclesiastical disciplines and, through the approval of periods of time, instructed for divine

service by no means presume to aspire to the supreme priesthood of the Church. And not only is ambition to be held ineffective in him, but his ordainers are also to lack that order which they believed they could presume contrary to the precepts of the fathers. GRATIAN. Behold: a bishop must have skill in the sacred letters. Hence in the Old Testament, among the other ornaments, the pontiff bore the breastpiece upon his breast, on which were written manifestation and truth, because manifest knowledge of the truth ought to be in the breast of the pontiff. §1. Hence also the poles by which the ark was carried were continually inserted into the rings so that, when the ark had to be carried, no delay would occur from putting the poles in, because preachers, through whom the Church is carried about, ought always to devote themselves to the sacred letters, lest they seek to learn at the time when by reason of their office they ought to teach others. §2. Hence also David first received by the grace of the Holy Spirit the gift of knowledge and afterward attained the administration of the kingdom. §3. Solomon too sought from God and obtained not riches, not long periods of this life, but wisdom. §4. Hence also the Lord first places his words in the mouth of the prophet and afterward establishes him over nations and kingdoms, saying to Jeremiah: "Behold, I have given my words in your mouth. Behold, I have established you today over nations and over kingdoms," etc. §5. Hence Malachi also says: "The lips of the priest guard knowledge, and they seek the law from his mouth, because he is the angel of the Lord of hosts." §6. Hence our same Savior first sat in the midst of the doctors, hearing and questioning them, and afterward began to preach, because each person ought first to learn and afterward assume the office of preaching. §7. Hence Solomon also first says, "a time for being silent," and afterward, "for speaking," because truth is first learned by being silent and afterward preached by speaking. §8. Hence the same Lord says: "Let one who hears say: Come." §9. Hence also he first taught the Apostles and then sent them to preach, saying: "Be prudent as serpents and simple as doves." Thus also after the resurrection he first opened their understanding and explained the Scriptures, and afterward said to them: "Going into the whole world," etc. Hence, when he wished to refresh five thousand men from five loaves, first, taking the loaves, he broke them, and afterward gave them to the disciples, and finally through them set them before the crowds, because by discussing he first expounded the sacraments of the law and the prophets, afterward gave their knowledge to the disciples, and finally through them dispensed it to the faithful. §10. And hence Peter, when he wrote to the rulers of the Church, said: "Prepared to render an account to everyone asking you for satisfaction concerning that faith and hope which is in you." §11. Hence also Paul, writing to Timothy, says: "Attend to reading, exhortation, and doctrine." §12. From all these things it is clearly gathered that a good manner of life and uprightness of morals do not suffice for prelates unless knowledge of doctrine is added. §13. Hence priests about to enter the tabernacle were first washed in the bronze laver that Moses had made from the mirrors of the women. §14. Hence also in the Song of Songs the eyes, by which the prelates of the Church are understood, are likened to doves that sit beside the fullest streams. Hence Jerome also, on Leviticus [c. 8]:

C. III. It belongs to a priest to possess knowledge of the law and to devote labor not to wars but to prayers.

If anyone wishes to be a pontiff not so much in designation as in merit, let him imitate Moses; let him imitate Aaron. For what is said concerning them? That they do not depart from the tabernacle of the Lord. Moses therefore was continually in the tabernacle of the Lord. But what work did he have? Either to learn something from God or himself to teach the people. These are the two works of a

pontiff: that he learn from God by reading the divine Scriptures and meditating often, or that he teach the people. But let him teach those things that he himself learned from God, not from his own heart or from human sense, but the things that the Holy Spirit teaches. §1. There is also another work that Moses does: he does not go to wars; he does not fight against enemies. But what does he do? He prays, and as long as he prays, his people conquer; if he relaxes and lowers his hands, his people are conquered and put to flight. Let the priest of the Church therefore pray continually, so that the people who are under him may conquer the invisible enemies, the Amalekites, who are the demons attacking those who wish to live piously in Christ.

Distinction XXXVII

GRATIAN. Part I. But it is asked whether they ought to be instructed in secular letters. Concerning these things it is written thus in the Fourth Council of Carthage [c. 16]:

C. I. A bishop is not to read the books of the gentiles.

Let a bishop not read the books of the gentiles, but those of heretics according to necessity or occasion.

C. II. Priests who, leaving aside the Gospels, read comedies are reproved.

Likewise Jerome to Damasus, *On the Prodigal Son* [epistle CXLVI]. We see priests of God, leaving aside the Gospels and the Prophets, read comedies, sing the amorous words of bucolic verses, hold Virgil, and make in themselves a crime of pleasure that which in boys is a matter of necessity.

C. III. Those occupied by secular disciplines walk in vanity and obscurity of understanding.

The same [commentary on c. 4 of the epistle to the Ephesians, Book II]. Does one not appear to you to walk in vanity of understanding and obscurity of mind who is tormented day and night in the dialectical art? Who, an investigator of nature, lifts his eyes beyond heaven and sinks beyond the depth of the earth and the abyss into a certain void? Who burns over the iamb? Who studiously distinguishes and amasses so great a forest of meters in his heart? And, that I may pass to the other side, who seeks riches by right and wrong? Who flatters kings, hunts after the inheritances of others, and gathers wealth that he does not know to whom he will leave in a moment?

C. IV. Those who understand the sacred Scriptures badly, or misuse secular wisdom, are intoxicated with wine and strong drink.

The same, on Isaiah. Those who understand the sacred Scriptures badly and pervert them are intoxicated with wine; with strong drink, those who misuse secular wisdom and the snares of dialecticians, which ought to be called not so much bonds as phantasms—that is, certain shadows and images that quickly perish and are dissolved. The same: §1. According to the tropological sense, we ought to understand as pseudo-prophets those who receive the words of the Scriptures otherwise than the Holy Spirit sounds them, and as diviners those who, by the conjecture of their own mind, pronounce the uncertainties of future things as though true without the authority of the divine words. The same: §2. Whoever does not understand the Scriptures as the truth of the matter holds eats a sour grape.

C. V. Bishops who instruct their sons in secular letters are reproved.

The same [Book III, at c. 6], in the epistle to the Ephesians. Let bishops and priests read this, who instruct their sons in secular letters and make them read comedies and sing the shameful writings of mimes, perhaps instructing them from ecclesiastical expenditures. And that which a virgin or widow, or any poor person pouring out all his substance, had offered into the treasury for sin, the grammarian and orator turns into a New Year's gift for the Kalends, a Saturnalian present, and a Minerval gift, or into domestic expenses, temple contributions, or filthy profit. Eli himself was a holy priest; but because he did not instruct his sons in every discipline and correction, he fell backward and died.

[PALEA.

C. VI. Likewise from the response of Pope Adrian to Charles, c. 49.

Heretics establish all the force of their poisons in dialectical disputation, which by the judgment of philosophers is defined as having not the power of constructing but the zeal of destroying. But it did not please God to save his people through dialectic. For the kingdom of God is in simplicity of faith, not in contention of speech.]

C. VII. Blessed Jerome is beaten by an angel because he read the books of Cicero.

Likewise Rabanus, *On Ecclesiastical Afflictions*. We read concerning blessed Jerome that, when he was reading a book of Cicero, he was reproved by an angel because, although a Christian man, he devoted himself to the fabrications of the pagans. GRATIAN. Hence also that prodigal son in the Gospel is reproved who wished to fill his belly from the husks that the swine ate. §1. Hence Origen also understands the gnats and frogs with which the Egyptians were struck as the vain garrulity of dialecticians and sophistical arguments. From all these things it is gathered that skill in secular letters is not to be sought by ecclesiastics. §2. But to the contrary it is read that Moses and Daniel were instructed in all the knowledge of the Egyptians and Chaldeans. It is also read that the Lord commanded the children of Israel to despoil the Egyptians of gold and silver, morally instructing that, whether we find the gold of wisdom or the silver of eloquence among poets, we should turn it to the use of salutary instruction. §3. In Leviticus we are also commanded to offer to the Lord the first fruits of honey, that is, the sweetness of human eloquence. §4. The Magi too offered three gifts to the Lord, in which certain persons wish the three parts of philosophy to be understood. §5. Finally, as Cassiodorus testifies in the exposition of the Psalter, all the splendor of rhetorical eloquence, all the modes of poetic speech, and every variety of becoming pronunciation took their origin from the divine Scriptures. §6. Hence Ambrose also says upon the epistle to the Colossians: "Every principle of heavenly knowledge or of earthly creation is in him who is their head and author, so that one who knows him seeks nothing beyond him, because he is perfect power and wisdom; whatever is sought elsewhere is found perfectly here. In Daniel and Solomon he shows to the unbelievers that he is the author of all wisdom. The unbelievers do not think this because they do not read in the Gospels and Prophets astrology and other things of this kind, which are despised because they avail nothing for salvation but send persons into error, and, while they study these things, they have no care for the soul. But one who knows Christ finds the treasure of wisdom and knowledge, because he knows that

which is useful." Hence Bede also says in [Book II] of Kings [c. 9, in the allegorical expositions of Samuel]:

C. VIII. Clerics are not to be prohibited from reading secular letters.

One who thinks that readers are to be prohibited in every way from reading all secular books disturbs their acuteness and compels it to fail; if any useful things are found in these books, it is lawful to take them as one's own. Otherwise Moses and Daniel would not have permitted themselves to be instructed in the wisdom and letters of the Egyptians and Chaldeans, although they abhorred both their superstitions and their delicacies. Nor would the teacher of the gentiles himself have inserted certain verses of the poets into his writings or sayings. Part II. GRATIAN. Why, therefore, are those things prohibited from being read that are proved so reasonably to be read? But some read secular letters for pleasure, delighted by the fabrications of the poets and the ornament of words; others learn them for instruction, so that by reading they may detest the errors of the gentiles and devotedly turn the useful things they find in them to the use of sacred instruction. Such persons laudably learn secular letters. Hence blessed Gregory did not reprove a certain bishop because he had learned them, but because, contrary to the episcopal office, he expounded grammar to the people in place of a reading from the Gospel. Hence Ambrose also writes upon Luke [in the explanation of the proem]:

C. IX. Secular letters are to be read so that they are not unknown.

We read certain things lest they be read; we read lest we be ignorant; we read not to retain but to repudiate.

C. X. Grammar is to be read so that the sacred Scriptures may be understood through it.

Likewise Jerome upon the epistle to Titus. If anyone knows the grammatical art or dialectic so that he may possess a principle of speaking correctly and judge between false and true things, we do not disapprove. §1. Geometry, arithmetic, and music, however, possess truth in their knowledge, but that knowledge is not the knowledge of piety. The knowledge of piety is to read the Scriptures and understand the Prophets, to believe the Gospel, and not to be ignorant of the Apostles. §2. The doctrine of grammarians, however, can advance toward life when it has been taken up for better uses.

C. XI. By the example of Daniel it is proved that being instructed in secular letters is not a sin.

Likewise. Those who refuse to eat from the king's table and wine lest they be polluted—assuredly, if they had known that the wisdom and doctrine of the Babylonians was a sin, they would never have acquiesced in learning what was unlawful. But they learn not to follow but to judge and convict, just as anyone who wishes to write against astrologers while unskilled in astrology lies open to ridicule, as does one disputing against philosophers if he is ignorant of the doctrines of the philosophers. They therefore learn Chaldean doctrine with the mind with which Moses too had learned all the wisdom of the Egyptians. The same: §1. If at any time we are compelled to recall secular letters and to learn some of those things that we once omitted, this is not of our will, but, so to speak, of the gravest necessity, so that we may prove that the things foretold by the holy prophets many ages before are contained in the letters of the Greeks, the Latins, and other nations.

C. XII. Let bishops establish masters and doctors in suitable places.

Likewise from the Synod of Pope Eugenius [II, c. 34]. It is reported to us concerning certain places that neither masters nor care for the study of letters is found. Therefore let all bishops exercise altogether care and diligence among the peoples subject to them and in other places where necessity occurs, so that masters and doctors may be established who continually teach the studies of letters and the doctrines of the liberal arts, because in these especially the divine commandments are manifested and explained.

C. XIII. By the authorities of the gentiles their vanity is blunted and convicted.

Likewise Augustine, *Against the Manichaeans* [Book XIII, c. 15]. If the Sibyl, Orpheus, or other seers or philosophers of the gentiles are reported to have foretold anything true concerning God, this indeed avails something for convicting the vanity of the pagans, but not for embracing their authority. For as great as is the distance concerning the coming of Christ between the preaching of angels and the confession of demons, so great is that between the authority of prophets and the curiosity of sacrilegious persons.

C. XIV. Skill in secular letters is necessary for understanding the sacred Scriptures.

Likewise Clement [Pope Clement I, epistle V to his disciples]. Part III. It has been reported to us that certain persons dwelling in your regions oppose sound doctrines and, as it seems to them, teach not according to the tradition of the fathers but according to their own understanding. For, as we have heard, certain ingenious men of your regions grasp many semblances of truth from the things they read. And therefore it must be diligently observed that, when the law of God is read, it should not be read or taught according to the understanding of one's own ability. For there are many words in the divine Scriptures that can be drawn to that meaning which each person voluntarily presumes for himself, but this ought not to be. For you ought not to seek an alien and foreign meaning from outside so that in any way you may confirm it from the authority of the Scriptures, but to grasp the meaning of truth from the Scriptures themselves. And therefore one must learn knowledge of the Scriptures from one who preserves it as handed down to him according to truth by his elders, so that he himself may competently assert what he rightly received. For when anyone has received from the divine Scriptures an integral and firm rule of truth, it will not be absurd if he also brings something from common instruction and the liberal studies that perhaps he touched upon in childhood to the assertion of true doctrine, yet in such a way that, where he has learned true things, he avoids false and feigned ones.

C. XV. Why a Christian is prohibited from reading poetic fabrications.

Likewise Isidore in Book [III] of the *Sentences* [*On the Supreme Good*, c. 13]. Part IV. A Christian is prohibited from reading the fabrications of poets because through the enticements of their tales they stir the mind too greatly toward the incentives of lusts. For persons sacrifice to demons not only by offering incense, but also by receiving their sayings more willingly. Part V. GRATIAN. Thus, as appears from the foregoing authorities, lack of skill ought always to be opposed to priests, since, when those blinded by ignorance begin to provide leadership to others, both fall into the pit. Hence it is said in the Psalm: "Let their eyes be darkened so that they do not see, and bend their back always."

For when those who go before are darkened, those following are readily inclined to bear the burdens of sins. Priests must therefore labor to cast ignorance away from themselves as a kind of pest. For although a servant who does not know his lord's will and does not do it is said to be beaten with few blows, this is nevertheless not understood generally concerning all. For as the Apostle says, "One who is ignorant will be ignored." This is to be understood concerning the one "who was unwilling to understand so that he might act well." Hence Augustine says in the *Book of Questions* [of the Old and New Testament, question 67]:

[C. XVI.]

Not every ignorant person is immune from punishment. For that ignorant person who found no one from whom he could learn can be excused from punishment. But this cannot be forgiven to those who, having someone from whom they could learn, gave no effort.

Distinction XXXVIII

GRATIAN. Part I. Since, therefore, voluntary ignorance is harmful to everyone, it is dangerous to priests.

Hence it is read in the Council of Toledo [IV, c. 24]:

C. I. Ignorance is especially to be avoided by priests.

Ignorance, the mother of all errors, is especially to be avoided in the priests of God, who have undertaken the office of teaching among the people of God. For priests are admonished to read the sacred Scriptures, the apostle Paul saying to Timothy: "Attend to reading, exhortation, doctrine," and: "Always remain in these things." Let priests therefore know the sacred Scriptures and the canons, and let their entire work consist in preaching and doctrine, and let them build up everyone both by knowledge of the faith and by discipline of works.

C. II. When priests are ordained, let them receive the official book from the bishop.

Likewise from the same [Council of Toledo IV, c. 25]. When priests are ordained in parishes, let them receive the official book from their bishop, so that they may proceed instructed to the churches assigned to them, lest through ignorance they offend even in the divine sacraments themselves. But when they come to litanies or to a council, let them render an account to their bishop of how they celebrate the office they have undertaken, or baptize.

C. III. The ignorance of priests is worthy neither of excuse nor of pardon.

Likewise Leo to the Bishops of Constantinople. If ignorance appears intolerable in laypeople, how much more in those who preside? It is worthy neither of excuse nor of pardon.

C. IV. Priests are not permitted to be ignorant of the canons.

Likewise Celestine to all orthodox Bishops. Let none of the priests be permitted to be ignorant of the canons or to do anything that can oppose the rules of the Fathers. For what worthy thing will be

preserved by us if the norm of decretal constitutions is broken by license permitted to the peoples at the pleasure of others?

C. V. What things are necessary for priests to learn.

Likewise from the sayings of St. Augustine. The things necessary for priests themselves to learn are these: the book of the sacraments, the lectionary, the antiphonary, the baptismal book, computus, the penitential canons, the Psalter, and homilies suitable for Sundays and for the several feasts throughout the cycle of the year. If one of all these is lacking, the name of priest will scarcely stand in him, because the evangelical threats are very dangerous, in which it is said: "If the blind offers guidance to the blind, both fall into the pit."

C. VI. What one who is to be ordained bishop ought to know.

Likewise from the Seventh Synod [c. 2]. All of us who chant promise God: "I will meditate upon your justifications; I will not forget your words." It is indeed most salutary for all Christians to observe this, but especially for those who have obtained ecclesiastical dignity. Hence we determine that everyone who is to be advanced to the grade of the episcopate must by all means know the Psalter, so that from this all the clergy who will be under him may also be admonished and imbued. Let him, however, be diligently examined by the metropolitan as to whether he is ready to read searchingly and not cursorily both the sacred canons and the holy Gospel, as well as the book of the divine Apostle and all divine Scripture, and to conduct himself according to the commandments and teach the people committed to him. For the substance of our high priesthood is the divinely handed-down utterances, that is, the true discipline of the divine Scriptures, as the great Dionysius declares. But if he has objected and has by no means promised that he will willingly do and teach in this way, let him under no circumstances be consecrated. For God says prophetically: "You have rejected knowledge, and I will reject you, so that you do not exercise the priesthood for me."

C. VII. Concerning the same.

Likewise from the Third Council of Carthage [c. 3]. It was resolved that, when bishops or clerics have been ordained, their ordainers should first impress the decrees of the councils upon their ears, lest they come to regret having done something against the statutes of the council.

C. VIII. Those adhering to sacred Scripture are not obscured by worldly iniquity.

Likewise Pope Zephyrinus [epistle I to the Bishops of Sicily]. Just as night does not extinguish the stars of heaven, so worldly iniquity does not obscure the minds of the faithful adhering to the firmament of sacred Scripture.

C. IX. Ignorance of the Scriptures is ignorance of Christ.

Likewise Jerome on Isaiah. If, according to the apostle Paul, Christ is the power of God and the wisdom of God, ignorance of the Scriptures is ignorance of Christ.

C. X. Those who know, or are ignorant of, the things of God are known, or not known, by the Lord.

Likewise Gregory in the *Moralia*. Those who know the things that are God's are known by the Lord, and those who do not know the things that are God's are not known by the Lord, as Paul testifies, who says: "If anyone is ignorant, he will be ignored." The same: Whoever is foolish in guilt will be wise in punishment.

C. XI. Not one who does not know something, but one who thinks he knows what he does not know, is proved to err.

Likewise Augustine [in the *Enchiridion to Laurence*, c. 17]. Part II. Although error must be guarded against with as much care as we can, not only in greater but also in lesser matters, and although one can err only through ignorance of things, it does not, nevertheless, follow that everyone who does not know something immediately errs, but rather if anyone thinks that he knows what he does not know. For he approves the false as true, which is proper to error. Nevertheless, it matters very much in what matter each person errs. For in one and the same matter, one who knows is by right reason preferred to one who does not know, and one who does not err to one who errs. But in different matters—that is, when this person knows some things and that person others, and this person more useful things while that person knows less useful or even harmful things—who would not, in the things the latter knows, prefer to him the one who does not know? For there are certain things that it is better not to know than to know. Part III. GRATIAN. But although bishops or priests may through ignorance of grammatical art utter something faulty, they are not on that account to be despised by scholars, because faults of morals are to be guarded against more than faults of words. Hence Augustine in the book *On Catechizing the Uninstructed* [c. 9]:

C. XII. Let scholars not despise ecclesiastical simplicity.

Scholars must be diligently admonished that, clothed with Christian humility, they learn not to despise those whom they have recognized as avoiding faults of morals more than faults of words, and that they not dare to compare an exercised tongue with a chaste heart, much less prefer it, as they had been accustomed to do. For it is especially useful for these persons to know that meanings are to be preferred to words just as the soul is preferred to the body. From this it follows that they ought to prefer to hear discourses that are truer rather than more eloquent, just as they ought to prefer to have friends who are more prudent rather than more handsome. Let them also know that there is no voice to the ears of God except the affection of the soul. Thus they will not ridicule if perhaps they notice some prelates and ministers of the Church either invoking God with barbarisms and solecisms, or not understanding the very words they pronounce, and dividing them confusedly—not because these things should by no means be corrected, so that the people may say "Amen" to what they plainly understand, but because they are to be piously tolerated by those who have learned that, just as blessing is given by sound in the forum, so it is given by intention in the Church. And so that forensic diction may perhaps sometimes be good diction, yet it can never be called benediction.

[PALEA.

C. XIII. Concerning the same.

Likewise Gregory to Leander, Bishop of Seville, at the end of the preface to the *Moralia*. I consider it exceedingly unworthy that I should confine the words of the heavenly oracle beneath the rules of Donatus.]

[PALEA.

C. XIV. Likewise Augustine, *On True Religion*, cc. 49 and 50.

The expression of the divine Scriptures is to be accepted according to the peculiarity of each language. For every language has certain forms of expression proper to itself that, when transferred into another language, appear absurd.]

[PALEA.

C. XV. Likewise Jerome to Pammachius, epistle LII, whose beginning is: *It is sometimes a mark of Christian modesty*.

Ecclesiastical interpretation, even if it possesses elegance of expression, ought to conceal and flee it, so that it may speak not to the idle schools of philosophers and to a few disciples, but to the whole race of humankind.]

C. XVI. Let a bishop not blush, on account of the reproach of old age, to learn from children and from the least.

Likewise Pope Clement [epistle III]. Let no bishop, on account of the reproach of old age or nobility of birth, neglect to inquire from educated children or the least whether there is perhaps anything of utility or salvation. For one who lives rebelliously and refuses to learn and to do good things is shown to be a member of the devil rather than of Christ, and is revealed as an unbeliever rather than a believer.

Distinction XXXIX

GRATIAN. Behold, it has been shown fully that priests ought to be skilled in both sacred and secular letters. It is now asked whether they ought to have skill in secular affairs. That this is necessary for prelates is proved by many reasons. For prelates ought to minister to their subjects not only spiritual but also carnal assistance, by the example of Christ, who not only taught the crowds following him by the word but also healed them by power and refreshed them with bodily foods. But so that prelates can accomplish all these things fully, they ought to have shrewdness in secular affairs, so that by their caution both the churches may be preserved unharmed and necessary things may be supplied to each person according to his measure. Hence a certain man elected bishop was rejected by blessed Gregory on account of his simplicity, lest on his account the goods of the Church be squandered. Hence the same writes to the noble citizens of Naples [Book VIII, epistle 40]:

C. I. Those unskilled in secular affairs are not to be ordained bishops.

Peter the deacon, whom you declare was elected by you, is altogether simple, as is said, and you know that in this time such a person ought to be established at the summit of governance who

knows how to be solicitous not only concerning the salvation of souls but also concerning external utility and caution.

Distinction XL

GRATIAN. Part I. A bishop also ought to be adorned and hospitable. The episcopal ornaments ought to be understood as the virtues that are promised to them by the Lord when it is said: "I will clothe his priests with salvation." Hence in the Old Testament priests are read to have been adorned with various garments at the Lord's command, because the life of a pontiff ought to shine with manifold virtues, so that he may confer adornment upon the grade from which he did not receive it. For places do not make a priest holy, but life and morals do. Hence they should know that from the office they have undertaken they have obtained not a license to sin but a necessity of living well. Hence Pope Symmachus says:

C. I. The office of the priesthood does not confer but removes license to transgress.

We do not judge that blessed Peter, as you say, received from the Lord, together with the privilege of the see, a license to sin, nor that his successors did. He transmitted to posterity a perpetual endowment of merits together with the inheritance of innocence. What was conceded to him through the light of his deeds pertains to those whom an equal splendor of conduct illuminates. For who would doubt that one whom the summit of so great a dignity raises up is holy? If acquired goods through merit are lacking in him, those that are attested from the predecessor of the place suffice. For either it raises illustrious men to these heights, or it makes illustrious those who are raised.

C. II. The sons of the saints are those who practice their works.

Likewise Jerome [to Heliodorus, epistle I]. It is not easy to stand in the place of Peter and Paul and to hold the chair of those reigning with Christ, because on this account it is said: those who hold the places of the saints are not the sons of the saints, but those who practice their works.

C. III. Let nobility of morals, not of place or birth, make priests known.

Likewise Gregory. We who preside ought to become known not from the dignity of places or birth, but from nobility of morals; nor from the renown of cities, but from purity of faith.

C. IV. Not places or orders, but merits, join us to God.

The same to Anastasius the Priest [Book VI, epistle 29]. Places or orders do not make us near to our Creator, but either good merits join us or evil ones separate us.

C. V. The greatness of sin or of dignity casts each person down mightily.

Likewise John Chrysostom [that is, the author of the *Unfinished Work on Matthew*, homily 40, at c. 21]. Part II. A Christian person falls mightily into sin on account of two causes: either on account of the greatness of the sin or on account of the height of dignity.

C. VI. An apostolic pontiff who is negligent of his own and his brother's salvation is condemned.

Likewise from the acts of Boniface the Martyr. Part III. If the pope, negligent of his own and his brother's salvation, is reproved as useless and remiss in his works, and is moreover silent concerning the good—a thing that harms himself and everyone more—he nevertheless leads innumerable peoples in crowds with himself to the first bondage of hell, to be beaten together with him for eternity with many blows. No mortal presumes to reprove his faults here, because he who will judge everyone is to be judged by no one, unless he is found deviating from the faith. The whole body of the faithful prays for his perpetual condition the more urgently, the more attentively they perceive their own salvation after God to depend upon his well-being.

C. VII. Not orders, but merits of life, commend us to God.

Likewise Augustine to Valerius [epistle CXLVIII]. Part IV. Before all things I ask that your religious prudence consider that there is nothing in this life, and especially in this time, easier and lighter and more acceptable to people than the office of bishop, priest, or deacon, if the matter is conducted perfunctorily and flatteringly; but nothing before God is more wretched, sorrowful, and damnable. §1. Likewise: There is nothing in this life, and especially in this time, more difficult, laborious, and dangerous than the office of bishop, priest, or deacon; but before God there is nothing more blessed, if service is performed in that manner in which our commander orders. What that manner is, however, I learned neither from my boyhood nor from my adolescence; and at the time when I had begun to learn, force was done to me by the merit of my sins. For I do not know what else I should think: the second place at the rudders was handed to me, who did not know how to hold an oar.

C. VIII. The priesthood is corrupted and dragged to earth unless it is preserved lawfully and justly.

Likewise Isidore. Just as the worthy union of a man and a woman makes one marriage, and just as the coupling of two perfects one body, so the clerical state and the priesthood make one priest, and election and consecration make one bishop. All these things effect one body, which is very quickly corrupted and dragged to earth unless it is lawfully preserved, unless it is praised by living justly.

C. IX. Grace, not place, saves the soul.

Likewise Ambrose [Book *On Paradise*, c. 4]. Part V. Observe this, however: the man was made outside paradise, the woman inside paradise, so that you may observe that each person acquires grace for himself not by nobility of place or of birth, but by virtue. Finally, the man made outside paradise—that is, in an inferior place—is found better, and she who was made in a better place—that is, in paradise—is found inferior.

C. X. Concerning the same.

Likewise Gregory [Book VI of the *Register*, epistle 5]. No secluded places whatsoever can save the soul without grace, something we sometimes behold even in the wanderings of the elect themselves. For Lot was righteous in the perverse city itself; on the mountain he sinned. But why do we say these things, when we know greater ones? For what is more delightful than paradise? What is safer than heaven? And yet man fell from paradise, and an angel from heaven, by sinning.

C. XI. Concerning the same.

The same. Adam, the first man, was cast out of paradise for sin; that is, he who cast away from himself the nobility of God was deprived of nobility of place.

C. XII. Not everyone who is called a priest is truly a priest.

Likewise John Chrysostom [that is, the author of the *Unfinished Work on Matthew*, homily 43, at c. 23]. Part VI. Many priests, and few priests: many in name, and few in work. See, therefore, how you sit upon the chair, because the chair does not make the priest, but the priest the chair; the place does not sanctify the person, but the person the place; not every priest is holy, but every holy person is a priest. One who has sat well upon the chair receives the honor of the chair; one who has sat badly does injury to the chair. Therefore an evil priest acquires from his priesthood an accusation, not dignity. For when sitting in judgment, if indeed you have lived well and taught well, you instruct the people; but if you have taught well and lived badly, you will be the condemner of yourself alone. For by living well and teaching well you instruct the people how they ought to live; but by teaching well and living badly you instruct God how he ought to condemn you. The same: §1. Whoever has desired primacy on earth will find confusion in heaven, nor will one who has treated of primacy be numbered among the servants of Christ. Let not each of them hasten to appear greater than others, but to appear lower than all, because it is not the one who is greater in honor who is more righteous; rather, the one who is more righteous is greater.

Distinction XLI

GRATIAN. Part I. Behold with what morals a priest ought to be adorned. In addition, of course, he ought to be adorned in external things, namely in habit and gait: in habit, so that he adorns himself with neither splendid nor filthy garments. For, as Jerome says, neither affected filth nor exquisite luxury produces praise, which is to be understood both of garments and of foods. Hence Augustine says in Book [III] of *Christian Doctrine* [c. 12]:

C. I. We ought to use foods in accordance with the morals of those with whom we live.

Whoever uses passing things more restrictively than the customs of those with whom he lives allow is either intemperate or superstitious. But whoever uses them in such a way that he exceeds the limits of the custom of the good persons among whom he dwells either signifies something or is shameful. For in all such matters it is not the use of things but lust that is at fault. §1. Therefore, what is fitting to places, times, and persons must be diligently attended to, nor should we rashly reprove disgraceful acts. For it can happen that without any fault of cupidity or voracity a wise person uses the most costly food, while a foolish person burns with a most foul flame of gluttony for the cheapest; and someone may more healthfully prefer to feed upon fish after the Lord's manner than upon lentils after the manner of Esau, Abraham's grandson, or upon barley after the manner of beasts of burden. For most beasts are not on that account more continent than we are because they are fed on cheaper foods. For in all matters of this kind, what we do is to be approved or disapproved not from the nature of those things we use but from the cause of using and the manner of desiring.

C. II. Not food, but appetite, is at fault.

Likewise Augustine on the epistle of John. Any delicacies, if received without desire, do not harm, and cheap foods received with appetite impede the progress of abstinence. For David poured out water he had desired, and Elijah ate meat.

C. III. The rich are not to be compelled to use certain foods contrary to the custom of their infirmity.

The same in the book *On the Words of the Lord* [according to Matthew c. 7, sermon V]. Let the rich not be compelled to eat the foods of the poor. Let them use the custom of their infirmity, but let them grieve that they cannot do otherwise: if they change their custom, they become ill. Let them use superfluous things; let them give necessary things to the needy. Let them use costly things; let them give cheap things to the poor.

C. IV. Equanimity in bearing, not the use of or abstinence from food, makes righteousness.

The same in Book [II] of *Questions on the Gospels* [c. 11]. That the Lord says in the Gospel, "Wisdom is justified by all her children," shows that the children of wisdom understand that righteousness lies neither in abstaining nor in eating, but in equanimity in bearing want and in temperance that is not corrupted through abundance, and in taking or not taking at the appropriate time those things whose use is not reproved, but whose coveting is. For it makes no difference at all what foods you take to relieve the necessity of the body, provided that in the kinds of foods you conform to those with whom you must live. Nor does it make much difference how much you take, since we see that the stomach of some is satiated more quickly and that they nevertheless gape ardently, intolerably, and altogether shamefully after that very little by which they are satiated; while others are indeed satiated by a somewhat larger cup, but bear want tolerably and, if at the time this is either useful or necessary, look calmly upon feasts set before them even before the hour and do not touch them. It matters more, therefore, not what or how much food someone receives in conformity with people and with his own person and according to the necessity of his health, but with how much ease and serenity of mind he goes without these things when it is either fitting or necessary to go without them, so that there may be fulfilled in the mind of the Christian what the Apostle says: "I know both how to have less and how to abound; everywhere and in all things I am instructed: both to be filled and to hunger, both to abound and to suffer want. I can do all things in him who strengthens me."

C. V. Temperance in foods and garments, not looseness in them, is praised.

Likewise from the Council of Gangra [last c.]. We do not reprove frugality together with humble clothing, just as we also praise adornment that is unpainted, apart from care of the body. But we do not receive those who are dissolute and effeminate in garments and gait. Not confining piety within private houses, we honor every place built in the name of the Lord; and we receive a congregation made in the church for the common utility, and we call blessed the good works that are exercised beyond one's means toward poor brethren according to ecclesiastical traditions, and we desire that all things conforming to the apostolic traditions and precepts of the holy Scriptures be done in the Church.

C. VI. Vices often insinuate themselves under the appearance of virtues.

Likewise Gregory [to John of Constantinople, Book I of the *Register*, epistle 24]. Vices often falsely claim to be virtues, so that stinginess wishes to appear as frugality, prodigality as generosity, cruelty as zeal for justice, and laxity as piety.

C. VII. Episcopal authority is sought by merits of faith and life, not by riches.

Likewise from the Fourth Council of Carthage [c. 15]. Let a bishop have cheap household goods, a poor table and sustenance, and let him seek the authority of his dignity by faith and the merits of life. §1. Let him also have a small lodging not far from the church.

[C. VIII.]

Likewise from the same [c. 45]. Let a cleric prove his profession even by his habit and gait, and therefore let him seek adornment neither in garments nor in shoes. GRATIAN. Therefore, just as we are admonished in foods to observe the customs of those with whom we live, so this is also to be understood concerning clothing. For, as is said elsewhere: "Whoever, despising those with whom he lives, seeks for himself finer or more austere clothing or food than the rest is either intemperate toward himself or superstitious." A priest ought, however, to be adorned in gait, so that by the gravity of his journey he may show the maturity of his mind. For disorderedness of the body, as Augustine says, indicates the quality of the mind. Hence that historian, when he described the mutability of the man whose conscience, stirred by cares, was laying waste his mind, indicated this also among the other noteworthy things: "His gait was now swift, now slow."

Distinction XLII

GRATIAN. Part I. A priest, however, ought to be hospitable, lest he be among the number of those to whom it will be said in the judgment: "I was a stranger, and you did not receive me." For how will one who, following the Apostle, ought to invite others to hospitality be able to be an exhorter to hospitality if he closes his own house to guests? For if a priest ought first to exact from himself and from his domestic church what he afterward commands the peoples; if first, in imitation of Christ, he himself ought to do the things that he afterward teaches the people, it is necessary that he receive the poor in hospitality, so that by his example he may more easily draw his subjects to hospitality. §1. Therefore, let one who is to be ordained priest recall to memory how Abraham and Lot merited to please God through works of hospitality and to receive angels as guests; how the angels, having entered the hospitable house in Sodom, delivered Lot with his family; how fire entered the houses closed to guests and destroyed them; how also, according to Jerome, one who is proved to retain for himself more than what is necessary is convicted of seizing the property of another; and so let him train himself through works of piety, so that he may receive from the Lord both the supports of the present life and the rewards of eternal glory, for both are promised to piety. §2. Hence the Apostle, writing to Timothy, says: "Train yourself in piety. For bodily exercise is indeed useful for a little; but piety is useful for all things, having the promise of the life that now is and of that which is to come." Whoever is alien to this cannot be ordained a priest. §3. For if a widow is prohibited from being received in the Church when she has not received the poor in hospitality, has not washed the feet of the saints, and has not pursued every good work, much more are those proved alien to the work of

piety to be prohibited from the priesthood. §4. Hence certain persons who despised works of hospitality are excommunicated in the Council of Gangra. For it was established in it thus [c. 11]:

C. I. Those who provide banquets for the poor are not to be despised.

If anyone despises those who faithfully provide *agapae*, that is, banquets, for the poor and summon brethren for the honor of the Lord, and is unwilling to participate in invitations of this kind, making little of what is done, let him be anathema. GRATIAN. Hence John the Evangelist in his epistle also excommunicates a certain Diotrephes, who neither received the poor and cast those who received them out of the Church. In hospitality, however, there is to be no selection of persons; rather, we ought without distinction to show ourselves hospitable to any whom we are able to assist.

Hence John Chrysostom in the epistle to the Hebrews [homily XI, toward the end, on c. 6]:

C. II. There ought to be no distinction in receiving guests.

Part II. Let us desist from this absurd, diabolical, and destructive curiosity. For if someone says that he has been elected among the clergy, if he calls himself a priest, examine him; for in such matters unexamined communion is not without danger. Danger is involved in greater matters, for you do not give, but receive. But if he asks for nourishment, do not examine him concerning these things. How did Abraham show himself hospitable toward everyone? If he had been an examiner of those taking refuge with him, he would never have received angels as guests. For perhaps he would not have thought them angels but would have repelled them with the rest; but because he received everyone, he received angels also. For God will repay you a reward not from the life of those whom you receive, but from your will, from great honor shown, from mercy, and from goodness. Part III. GRATIAN. But although the banquets themselves are not to be despised, nevertheless they ought neither to be celebrated in churches nor clerics summoned to them to take portions from them for themselves.

C. III. Clerics summoned to an *agape* are not to take a portion for themselves.

Ministers of the altar or any clerics summoned to an *agape* ought not to take portions, because of the injury that from this occasion could be imputed to the ecclesiastical order.

C. IV. In places consecrated to God it is permitted neither to eat nor to spread dining couches.

Likewise [c. 28]. Part IV. It is not fitting to hold an *agape* in basilicas or churches and to eat inside, or to spread dining couches.

C. V. Unless compelled by necessity, clerics are not to banquet in a church.

Likewise from the Third Council of Carthage [c. 30]. Let no bishops or clerics banquet in a church, unless perhaps those passing through are refreshed there by the necessity of lodgings. Let the people also be prohibited from banquets of this kind as far as can be done.

[PALEA.

C. VI. Concerning the same.

Likewise from the sayings of blessed Benedict the Abbot. Let the oratory be what it is called; and let nothing else whatsoever be done or stored there except what befits the divine ministries.]

[PALEA.

C. VII. Concerning the same.

Likewise Augustine [epistle CIX, *On the Rule of Monks*]. In the oratory let absolutely nothing be done beyond the observance of praying and chanting psalms, so that the works continually performed may accord with this name.]

Distinction XLIII

GRATIAN. Part I. A priest ought also to be modest, so that he may unceasingly display modesty both in morals and in words. Hence in the Song of Songs the cheeks of the bride, that is, preachers, are compared to a turtledove. §1. He ought also to have the grace of teaching, because, as Jerome says: "An innocent manner of life without speech does as much harm by its silence as it profits by its example. For wolves are to be driven away by the barking of dogs and by the staff." In teaching itself, however, a ruler ought to be discerning, lest he either utter things that should be kept silent or keep silent about things that should be said. Hence Gregory says in chapter XV [Part II] of his *Pastoral Rule* [c. 4]:

C. I. Concerning discretion in preaching and silence.

Let a ruler be discerning in silence and useful in speech, lest he either utter what should be kept silent or keep silent about what should be uttered. For just as incautious speech drags into error, so indiscreet silence leaves in error those who could have been instructed. For often improvident rulers, fearing to lose human favor, are afraid to speak right things freely; and, according to the voice of Truth, they no longer serve the guardianship of the flock with the zeal of shepherds, but in the manner of hirelings, because when the wolf comes they flee by hiding themselves beneath silence. Hence the Lord, reproving them through the Prophet, says in Isaiah: "Mute dogs, unable to bark." Hence again he complains, saying in Ezekiel: "You have not gone up against the enemy, nor have you set up a wall for the house of Israel, that you might stand in battle on the day of the Lord." For to go up against the enemy is to oppose the powers of this world with a free voice in defense of the flock. And to stand in battle on the day of the Lord is to resist those fighting perversely out of love of justice. For what else is a pastor's fear of speaking right things than to have offered his back by keeping silent? If indeed he opposes himself for the flock, he sets a wall against the enemies for the house of Israel. Hence again it is said to the delinquent people in Jeremiah: "Your prophets saw false and foolish things for you, and they did not lay open your iniquity, that they might provoke you to repentance." For in sacred eloquence teachers are sometimes called prophets, who, while they point out that present things are fleeting, reveal the things that are to come. The divine word reproves them for seeing false things because, while they fear to correct faults, they vainly flatter the delinquent with promised security. They by no means lay open the iniquity of sinners because they keep silent from the voice of reproof. For the word of correction is the key of opening, because by reproving it uncovers a fault that often even the one who committed it does not know. Hence Paul

says to Titus: "That he may be able to exhort in sound doctrine and to reprove those who contradict." Hence it is said through Malachi: "The lips of the priest guard knowledge, and they seek the law from his mouth, because he is the angel of the Lord of hosts." Hence through Isaiah the Lord admonishes, saying: "Cry out; do not cease; lift up your voice like a trumpet." For whoever approaches the priesthood undertakes the office of a herald, so that by crying out he may himself go before the coming of the judge who follows terribly. Therefore, if a priest is ignorant of preaching, what voice of crying out will the mute herald give? Hence in the Acts of the Apostles it is said that the Holy Spirit rested upon the first pastors in the form of tongues, because, assuredly, he immediately makes those whom he has filled speak concerning him. Hence Moses is commanded in Exodus that, when the priest enters the tabernacle, he should be surrounded by bells, so that he may have the voices of preaching and not offend the judgment of the heavenly inspector through silence. For it is written: "That the sound may be heard when he enters the sanctuary in the sight of the Lord, and that he may not die." For a priest entering or leaving dies if no sound is heard from him, because he summons against himself the wrath of the hidden judge if he proceeds without the sound of preaching. Appropriately, moreover, the bells are described as inserted in his garments. For what else ought we to understand by the garments of the priest than right works? The Prophet bears witness, who says in Psalm CXXXVI: "Let your priests be clothed with justice." Therefore bells adhere to his garments so that the works of the priest themselves, together with the sound of his tongue, may proclaim the way of life. But when a ruler prepares himself to speak, let him attend with how great a zeal of caution he speaks, lest, if he is swept into speaking inordinately, the hearts of the hearers be struck by the wound of error and, while perhaps he desires to appear wise, he foolishly cut apart the bond of unity. Hence Truth says in Mark: "Have salt in yourselves, and have peace among yourselves." By salt, indeed, the wisdom of the word is designated. Therefore, let one who strives to speak wisely greatly fear lest the unity of the hearers be confounded by his speech. Hence Paul says to the Romans: "Not to be wise beyond what it is fitting to be wise, but to be wise unto sobriety." In Exodus, according to the divine voice, pomegranates are joined to the bells on the priest's garment. For what is designated by pomegranates except the unity of faith? For just as many seeds within are protected by a single rind outside in one pomegranate, so the unity of faith covers the innumerable peoples of the holy Church, whom a diversity of merits holds within. Therefore, lest an incautious ruler rush forth to speak, Truth herself proclaims to the disciples in Mark what we have already set forth: "Have salt in yourselves, and have peace among yourselves," as if she were figuratively saying through the vestment of the priest: Join pomegranates to the bells, so that in everything you say you may hold the unity of faith with cautious observance. §1. It must also be provided with solicitous attention by rulers that not only perverse things but not even right things be uttered by them excessively and inordinately, because often the force of things said is lost when it is cheapened in the hearts of hearers by the incautious importunity of loquacity; and this same loquacity, which does not know how to serve the hearers for the use of advancement, defiles its author. Hence it is well said through Moses in Leviticus: "The man who suffers a flow of seed shall be unclean." For in the mind of hearers the even quality of speech that is heard is the seed of a thought that will follow, because, while a discourse is conceived through the ear, a thought is generated in the mind. Hence the distinguished preacher was called a "word-sower" by the wise men of this world in the Acts of the Apostles. Therefore, one who sustains a flow of seed is declared unclean because, subjected to much speaking, he defiles himself by that which, if he uttered it in an orderly manner, could have brought forth the

offspring of right thought in the heart of the hearers; and while he flows away incautiously through loquacity, he pours out seed not for the use of generation but unto uncleanness. Hence Paul also, when he admonished his disciple concerning persistence in preaching, said in the Second Epistle to Timothy: "I testify before God and Christ Jesus, who will judge the living and the dead, and by his coming and his kingdom: preach the word; be urgent in season, out of season." Before he said "out of season," he placed "in season," because, assuredly, in the mind of the hearer he destroys himself by his own cheapness if his importunity does not know how to possess timeliness.

C. II. Sacred things are not to be entrusted to swine and dogs.

Likewise Origen. Part II. We have it among the commandments that, when coming to a city, we should first learn who in it is worthy for us to take food with him. How much more ought one to know who and of what quality is the person to whom the words of immortality are to be entrusted? For we ought to be solicitous lest we cast our pearls before swine. But for other reasons it is useful for me to have knowledge of this man. For if I know that he is corrected and blameless in those things concerning which it cannot be doubted that they are good—that is, if he is sober, merciful, just, meek, and humane, things no one doubts are good—then it will appear consequent that what is lacking in faith and knowledge should also be conferred upon one who possesses the goods of the virtues, and that he should be corrected in the things in which his life, otherwise approved in the remaining matters, appeared to be stained. But if he remains enveloped and defiled in sins that are manifest, I ought not to utter anything to him concerning the more secret and remote things of the divine judgment; rather, I should protest and admonish him to cease sinning and to correct his deeds from vices. But if he thrusts himself forward and provokes us to say things that it is not fitting for one acting less rightly to hear, we ought prudently to elude him. For to answer absolutely nothing does not appear useful on account of the hearers, lest perhaps they think that we decline the contest from lack of an answer and the faith of those who do not understand our purpose be injured.

C. III. Prelates are not to withhold the words of preaching from their persecutors.

Likewise Anacletus [epistle I to all Bishops]. Part III. We know, however, that many harass teachers for this reason, so that they may destroy them and fulfill the resolutions of their own will. Nevertheless, teachers ought not on that account, insofar as their powers suffice, to withdraw from right emulation and good intention, knowing that blessed are those who suffer persecution for justice.

C. IV. One who does not announce God's counsel to his subjects is not clean from their blood.

Likewise Gregory to Bishop Venantius [Book I, epistle 33]. Paul says to the Ephesians: "My hands are clean from the blood of all of you, for I did not shrink from announcing to you the whole counsel of God." Therefore, he would not be clean from their blood if he had been unwilling to proclaim God's counsel to them, because when a pastor is unwilling to reprove delinquents, he undoubtedly kills them by keeping silent.

C. V. A preacher who does not scatter the seed of the divine word incurs the penalty of eternal damnation.

Likewise Pope Nicholas [to Emperor Michael, in the epistle whose beginning is *We had proposed*]. The dispensation of heavenly seed has been enjoined upon us: "Woe to us if we do not scatter it; woe if we keep silent." Since the vessel of election fears this and cries out, how much more is it to be feared by any insignificant person? Accordingly, just as no slight danger lies upon pontiffs for having kept silent about what is fitting, so no moderate peril—may it be absent—belongs to those who, although they ought to obey, despise. Part IV. GRATIAN. A priest ought equally to observe that he not begin by his preaching to disclose secret mysteries to the unworthy and those who do not understand. For one who teaches things that cannot be understood by the hearers effects not their utility but his own ostentation. Hence in the exposition of "Blessed are the undefiled" it is said: "It is a vice of the mind to divulge secrets to the unworthy, which happens either through incautious loquacity, when an irrevocable word flies without judgment; or through flattery, so that he may please the one to whom he reveals secrets; or through boasting of knowledge, so that he may appear to know more things." In all these things it is indeed given to be understood how great discretion there ought to be in a priest's preaching. If perhaps he lacks it, he is judged unworthy of the priestly office as though with a twisted nose.

Distinction XLIV

GRATIAN. Part I. When he is prohibited from being given to wine, he is by no means permitted to have intemperance of gluttony; for drunkenness is not prohibited while voracity is permitted. The Apostle numbers both among the works of darkness, writing to the Romans: "Not in revelings and drunkenness." For the voracity of the belly easily provokes toward lust and dissolves every good work. Hence the belly and the genitals are near to one another, so that from the proximity of the members the alliance of the vices may be understood. Hence also Nebuzaradan, the chief of the cooks, is read to have destroyed the walls of Jerusalem, because the belly, which the multitude of cooks serves, levels the edifices of the virtues to the ground. Therefore, let a priest seek to live from the altar, not to live luxuriously. Hence Jerome says: "You, O priest, are permitted to live from the altar, not to live luxuriously." §1. Revelings, moreover, are harmful not only to priests but also to laypeople, who think that they celebrate festive and solemn days worthily in no other way unless they serve revelings. Hence Augustine writes to Bishop Aurelius [epistle LXIV]:

C. I. One must not give oneself to revelings and drunkenness.

Revelings and drunkenness are thought to be so conceded and lawful that in honor of the most blessed martyrs they are celebrated not only on solemn days—something that everyone who does not behold these things with fleshly eyes sees is to be lamented—but even daily. And a little later: Therefore, as I judge, these things are removed not harshly, not severely, not in an imperious manner, but more by teaching than by commanding, more by admonishing than by threatening. For one must act thus with a multitude. Severity, however, is to be exercised against the sins of a few. And if indeed we threaten, let it be done with sorrow, by threatening the future vengeance from the Scriptures, so that not we ourselves in our power but God in our discourse may be feared. Thus the spiritual, or those near to the spiritual, will first be moved, and by their authority and indeed very gentle but most persistent admonitions the remaining multitude may be broken.

C. II. None of the clerics or continent persons is permitted to enter taverns.

Likewise from the Council of Laodicea [c. 24]. Clerics serving from priests down to subdeacons, and thereafter all of ecclesiastical order down to ministers, or readers, or exorcists, or ostiaries, or psalmists, or even those who are in a profession of continence, ought not to enter taverns.

C. III. Let a cleric who wishes to keep a tavern or workshop be deposed.

Likewise from the Sixth Synod [c. 9]. No cleric is permitted to keep a tavern or workshop. For if he is prohibited from entering a tavern of this kind, how much more from ministering to others in it? But if anyone does such a thing, let him either cease or be deposed.

C. IV. Unless compelled by necessity, clerics are not to enter taverns.

Likewise from the Third Council of Carthage [c. 27]. Let clerics not enter taverns for the sake of eating or drinking unless compelled by the necessity of travel.

C. V. A bishop who is occupied with banquets is to be corrected.

Likewise Gregory to Bishop Natalis [Book II of the *Register*, indiction X, epistle 14]. Part II. From many persons coming from your city, dearest brother, I learned that, having abandoned pastoral care, you are occupied only with banquets. I would not believe the things heard unless I proved them by the evidence of your actions. For the fact that you by no means devote yourself to reading, by no means watch over exhortation, but are ignorant even of the very practice of ecclesiastical order, is testified by the fact that you do not know how to preserve reverence toward those under whom you are placed.

C. VI. Concerning the same.

Likewise to the same [Book II, epistle 37]. Your fraternity rightly praises in its letters banquets that are held with the intention of expending charity. Yet it must be known that they truly proceed from charity when the life of no absent person is bitten in them, no one is reproved in mockery, and in them not the empty tales of secular affairs but the words of sacred reading are heard; when the body is served no more than necessary, but only its infirmity is refreshed, so that it may be maintained for the exercise of virtue. Therefore, if you do these things at your banquets, I confess that you are masters of those who abstain.

[PALEA.

C. VII. Likewise from the Council of Nantes.

Let none of the priests, when he has gathered at the annual day, the thirtieth, seventh, or third day of any deceased person, or when priests have gathered at a collection by any invitation, presume in any way to become intoxicated, nor, having been entreated, to drink for love of the saints or of the soul itself, or to compel others to drink, or to gorge himself at another's entreaty. Nor let him presume to make disorderly applause and laughter, to recount empty tales there, or to sing; or permit shameful entertainments to be performed before him either by a bear or by dancing women; nor consent that masks of demons be carried before him, because this is diabolical and prohibited by the sacred canons.]

[PALEA

C. VIII. Concerning the same.

Likewise from the same. When priests gather at any banquet, let one who is their prior begin a verse before the table and bless the food. Then let them sit according to order, one offering honor to another; and let them bless the food and drink by turns, and let one of their clerics read something from holy Scripture. And after the refreshment, let them similarly say a holy hymn after the example of the Lord, as he is read to have done at the supper; and let all priests conduct themselves in such a way, especially in places of this kind, that their ministry may not be reviled.]

[PALEA

C. IX. Concerning the same.

Likewise from the same. When priests gather together at the Kalends, after the divine mystery has been completed, for a necessary conference, let them sit there at the tables not as though for a full refreshment but as though for a breakfast, lest through such dishonorable banquets they burden one another, because this is unbecoming and burdensome. Often, moreover, when they return late to the church they obtain greater loss from reproof, contracted from the burden they impose upon one another, than the profit they make there. For concerning an assembly of this kind Paul reproves the Corinthians, who came together to eat the Lord's supper in an unfitting manner. So also those who come together for the Lord's supper, that is, for a conference upon the word, under that pretext, while in truth they unite for the sake of the belly, are held reprehensible before God and human beings. And therefore, when all things have been completed, let those who wish break bread with charity in the house of their brother together with the brethren, and let each cause each to drink, and especially let them not touch the cup beyond a third time; and so let them return to the churches.]

C. X. Christians are not to celebrate banquets from contributions.

Likewise from the Council of Laodicea [c. 55]. Part III. Ministers of the altar or any clerics, or even Christian laypeople, ought not to celebrate banquets from contributions, which the common people call drinking parties.

C. XI. A reading from the sacred Scriptures is always to be mingled with priestly banquets.

Likewise from the Third Council of Toledo [c. 7]. For reverence toward God and the priests, the universal synod established that, because idle tales are frequently accustomed to be interposed at tables, a reading from the divine Scriptures should be mingled with every priestly banquet. For through this both souls are built up toward the good and unnecessary tales are prohibited.

C. XII. Clerics are permitted neither to hold banquets from contributions nor to eat before the third hour of the day.

Likewise from the Council of Pope Martin [cc. 61 and 66]. Let priests or clerics, or even religious laypeople, not be permitted to hold banquets from contributions. §1. Nor ought clerics or religious laypeople to enter banquets before the sacred third hour of the day, nor at any time ought clerics to eat bread unless a hymn has been said, and after food to return thanks to God the author. GRATIAN.

Therefore, if revelings are damnable for laypeople, much more are they imputed to priests unto Gehenna. For a fat belly, as Jerome says, generates a gross understanding, whereas priestly understanding ought, on the contrary, to be watchful and subtle; and therefore those subject to the vice of gluttony ought not to be anointed as priests. For those, as Gregory says in the *Moralia*, who are still subject to the warfare of vices ought by no means to preside over the teaching of others through the practice of preaching.

Distinction XLV

GRATIAN. Part I. It follows: "not a striker." For a bishop ought not to be so irascible and disturbed in understanding that he strikes, since he ought to be patient; rather, let him follow the one who set his back before scourges. Hence Gregory writes to John, Bishop of Constantinople [Book I, epistle 52]:

C. I. Bishops ought to be feared for correction by words, not by blows.

What the canons say concerning bishops who wish to be feared by blows your fraternity knows well. For we have been made shepherds, not strikers. The distinguished preacher says: "Reprove, entreat, rebuke with all patience and doctrine." But this preaching that exacts faith by blows is new and unheard of.

[C. II.]

Likewise in a certain Council [the Roman under Sylvester, c. 17]. Let no one touch any sinning cleric with a beating; let no priest bring a deacon, nor a bishop a cleric or servant of the Church, to a beating. But if the cause so requires—that is, if the cleric has proved incorrigible—let him be deprived of his honor for three days, so that, repenting, he may return to mother Church.

C. III. Certain persons are to be provoked to faith not by harsh but by gentle words.

Likewise to Paschasius, Bishop of Naples [Book XI, epistle 15]. Those who with sincere intention desire to lead persons alien to the Christian religion to the right faith ought to devote themselves to blandishments, not harshness, lest adversity drive far away those whose mind an explanation rendered calmly could have provoked. For whoever act otherwise and under this covering wish to remove them from the customary observance of their rite are proved to attend there to their own causes more than God's. §1. The Jews dwelling at Naples have indeed complained to us, asserting that certain persons strive unreasonably to prohibit them from certain solemnities of their feast days, so that it may not be lawful for them to observe the solemnities of their feasts as it has been lawful for them and their parents to observe them until now for long periods in the past. If the truth stands thus, they appear to devote their labor to a superfluous matter. For what utility is there when, even if they have been prohibited contrary to long usage, it profits nothing toward their conversion to the faith? Or why do we set rules for the Jews concerning how they ought to observe their ceremonies if through this we cannot gain them? Therefore one must act so that, provoked rather by reason and meekness, they may wish to follow us, not flee us, so that by showing them from their own books the things we say we may, with God's help, convert them to the bosom of mother Church. And so, as your fraternity is able, let it by admonitions and with God's help kindle them toward conversion, and let it not permit them again to be disturbed concerning their solemnities; rather, let them have free

license to observe and celebrate all their festivals and feast days, just as both they and their parents, observing them through long periods in the past, have maintained them until now.

C. IV. Prelates are to correct subjects not with severity but with benevolence.

The same to all the Bishops established throughout Gaul, Europe, and Germany. Although things that are to be reproved frequently happen among priests, nevertheless let benevolence accomplish more toward those to be corrected than severity, exhortation more than agitation, charity more than power, since none of us lives without reproof or without sin. For if the Lord had judged blessed Peter, our teacher and apostle, immediately after his threefold denial, he would not have received so much fruit from him as he did. Therefore, rulers of the Church are rather to be awaited and corrected than immediately judged. Hence it is necessary that every ecclesiastical affair, after the evidence of many causes, be considered more solicitously and guarded more diligently, so that through the spirit of charity and peace every material of scandals, presumption of the Jews, and oppression of simple brethren may be removed from the churches of the Lord. And just as none of the brethren wishes himself to be weighed down by the judgment of others, so let him not dare to inflict upon another what he does not wish to be done to himself. Jews are not to be compelled to the faith; nevertheless, if they have received it unwillingly, they are to be compelled to retain it. Hence in the Fourth Council of Toledo [c. 56] it was established:

C. V. Just as Jews are not to be compelled to the faith, so those converted are not permitted to withdraw from it.

Concerning the Jews, however, the holy synod commanded that henceforth no one inflict force upon them for believing. "For God has mercy upon whom he wills, and whom he wills he hardens." For persons of this kind are not to be saved unwillingly but willingly, so that the form of justice may remain integral. For just as a human being, obeying the serpent by the will of his own choice, perished, so, when the grace of God calls him, each person is saved by believing through the conversion of his own mind. Therefore, they are to be persuaded, not rather driven, to be converted, not by force but by the free capacity of choice. Those, however, who were formerly compelled to Christianity, as was done in the times of the most religious prince Sisebut, because it is now established that they were associated with the divine sacraments, received the grace of baptism, were anointed with chrism, and became participants in the body of the Lord, ought to be compelled to maintain the faith they received by force or necessity, lest the name of the Lord be blasphemed and the faith they received be held cheap and contemptible.

C. VI. Let benevolence accomplish more toward those to be corrected than severity.

Likewise Bishop Leo [epistle LXXXII to Anastasius, Bishop of Thessalonica, c. 1]. Although things that are to be reproved sometimes happen in priestly persons, nevertheless let benevolence accomplish more toward those to be corrected than severity, exhortation more than agitation, charity more than power. But those who seek the things that are their own, not the things of Jesus Christ, easily depart from this law; and while it pleases them to dominate subjects rather than counsel them, honor inflates pride, and that which was provided for concord tends toward harm.

C. VII. Let a deacon, priest, or bishop who seeks to be feared by blows be cast down from office.

Likewise from a canon of the Apostles [canon 28, according to the old version]. We command that a bishop, priest, or deacon who strikes delinquent believers or unbelievers acting unjustly, and through this wishes to be feared, be cast down from his office, because the Lord never taught us this. On the contrary, he himself, "when he was struck, did not strike back; when he was cursed, did not curse; when he suffered, did not threaten."

C. VIII. Bishops are to correct subjects not by blows but by words.

Likewise from the Council of Braga [III, c. 7]. Since the blessed Apostle commands one to reprove, entreat, or rebuke with all patience, we have learned that, outside this teaching, certain of the brethren rage with such great beatings against those without honor as the persons of brigands could deserve. And therefore, it is not worthy that those who have now merited ecclesiastical grades—that is, priests, abbots, or Levites, who, except for graver and mortal faults, ought to be subject to no blows—should everywhere be subjected to blows and pain by each prelate as he wishes and as it pleases him, lest, while he incautiously strikes the subject members, he also take away the reverence owed to him by his subjects, according to what a certain wise person says: "One lightly chastised displays reverence to the chastiser, but a reproof of excessive harshness receives neither reproof nor salvation." And therefore, if anyone, exalted by the license of the power he has received, believes that the aforesaid honorable subjects are to be beaten out of malice alone otherwise than has been said, he will sustain a sentence of both excommunication and exile according to the measure of the blows he has inflicted. Part II. GRATIAN. Solomon, however, admonishes to the contrary, saying: "Strike your son with the rod, and you will deliver his soul from death." Hence blessed Gregory also writes in the *Dialogues* that blessed Benedict healed by striking with a rod a certain monk whom he could not cure by frequent admonition. Hence also the Lord, having made a scourge from little cords, scourged those conducting themselves badly in the temple and cast them out of the house of prayer. Hence also the Apostle handed that fornicator over to Satan to be vexed bodily, and condemned that magician with bodily blindness. Hence also in the canons boys who before the rational years conduct themselves irrationally are commanded to be chastised by blows. Virgins also, if they have put aside the garment of religion and joined themselves to others, are commanded to be confined in workhouses. Hence Gregory also writes in the *Moralia*, Book XX, part 4, chapter 11:

C. IX. Discipline is not to be preserved without mercy, nor mercy without discipline.

Discipline or mercy is greatly deprived if one is maintained without the other. But toward subjects there ought to be in rulers both mercy that counsels justly and discipline that rages piously. Hence it is that both wine and oil are applied to the wounds of that half-dead man who was led by the Samaritan into the inn, so that through wine the wounds may be bitten, and through oil they may be soothed; so that everyone who presides over the healing of wounds may apply in wine the bite of strictness and in oil the softness of piety. Through wine putrid things are cleansed; through oil things to be healed are soothed. Gentleness, therefore, is to be mingled with severity; a certain tempering is to be made from both, so that subjects may neither be ulcerated by much harshness nor loosened by excessive kindness. This is certainly signified by that ark of the tabernacle in which the rod is together with the tablets and the manna, because when knowledge of sacred Scripture is in the breast

of a good ruler, if there is the rod of strictness, let there also be the manna of sweetness. Hence David also says: "Your rod and your staff, they have consoled me." For by the rod we are struck, and by the staff we are sustained. Therefore, if there is the strictness of justice that strikes, let there also be the consolation of the staff that sustains. Accordingly, let there be love, but not one that softens; let there be vigor, but not one that exasperates; let there be zeal, but not one that rages immoderately; let there be piety, but not one that spares more than is expedient. It is pleasing to behold in the breast of Moses mercy joined together with severity. Let us see him loving piously and raging strictly. §1. Certainly, when the Israelite people had contracted before the eyes of God an almost unpardonable offense, so that its ruler heard: "Go down; your people have sinned," as if the divine voice said to him: "He who has fallen into such sin is not mine," and added: "Let me alone, that my fury may be angry against them and that I may destroy them, and I will make you into a great nation," he, once and again opposing himself for the people over whom he presided as a barrier against the onslaught of the angry God, said: "Either forgive them this offense, or, if you do not, blot me out of your book that you have written." Let us therefore consider with what inward affection he loved that people, for whose life he asked to be blotted from the book of life. Yet let us consider with how great a zeal for rectitude this man, who is bound by so great a love for that people, was inflamed against its faults. For immediately after he obtained that the pardon of the fault be granted, kindled by zeal for rectitude, he said: "Let every man place his sword upon his thigh; go and return from gate to gate through the midst of the camp, and let each kill his brother and friend and neighbor"; and on that day about twenty-three thousand persons fell. Behold, the one who sought the life of the people even by his own death extinguished by the sword the life of a few. Within he burned with the fire of love; without he was kindled with the zeal of severity. So great was his piety that he did not hesitate to offer himself to death before the Lord for them; so great his severity that those whom he had feared would be struck divinely he himself struck with the sword of judgment. Thus he loved those over whom he presided so that for them he did not spare even himself; and nevertheless he so pursued the delinquents whom he loved that he laid them low even when the Lord spared them. A strong legate in both matters, an admirable mediator in both, he pleaded the cause of the people before God by prayers and the cause of God before the people by swords. Loving inwardly, he opposed the divine wrath by supplication; raging outwardly, he consumed the fault by striking. Therefore, in governance Moses mingled both, so that neither mercy would be absent from discipline nor discipline from mercy. Hence here also it is said according to both virtues: "And when I sat as though a king with the army standing around me, I was nevertheless the consoler of those who mourned." For to sit with the army standing around is the vigor of the discipline of governance; but to console the hearts of those who mourn is the ministry of piety.

C. X. One judging justly preserves mercy together with justice.

The same. Everyone who judges justly carries a balance in his hand; in each weight he carries justice and mercy. But through justice he renders sentence upon sins; through mercy he moderates the punishment of sin, so that by a just balance he may correct certain things through equity and forgive others through compassion. One who sets the judgments of God before his eyes, always fearing and trembling, dreads in every affair lest, deviating from the path of justice, he fall and be condemned rather by that from which he is not justified.

C. XI. Both one who forgives and one who corrects show mercy.

Likewise Augustine in the *Enchiridion* [c. 72]. One who corrects by a blow the person over whom power is given, or restrains him by some discipline, and nevertheless forgives from the heart the sin by which he was injured or offended by him, or prays that it be forgiven him, gives alms not only in that he forgives and prays, but also in that he corrects and strikes with some corrective punishment, because he furnishes mercy. For many goods are furnished to unwilling persons when counsel is taken for their utility, not their will, because they are found to be enemies to themselves. GRATIAN. For there are many kinds of alms, concerning which Albinus says:

C. XII. Concerning the manifold kind of alms.

There are three kinds of alms: one bodily, to give a needy person whatever you can; another spiritual, to forgive one by whom you have been injured; the third, to correct a delinquent and lead those who err into the way of truth.

C. XIII. Alms of the heart are preferred to bodily alms.

Likewise Augustine [Book of Fifty Homilies, homily 6]. There are two alms, one of the heart, the other of money. Alms of the heart are to forgive one by whom you have been injured. For sometimes you seek to give something to a needy person and do not have it; to forgive one who sins abounds to you as much as you wish. Alms of the heart are much greater than alms of the body. §2. The alms of charity suffice without earthly substance; but those that are given bodily, if bestowed without a kindly heart, are altogether insufficient. Part III. GRATIAN. From all these things it appears that neither the gentleness of meekness without the rectitude of severity nor zeal for rectitude without meekness ought to be found in prelates. Therefore, the strikers who are removed from episcopal office by the foregoing authorities are to be understood not as any who corporally scourge, but as those who, having omitted meekness, are always ready for blows and desire through scourges not to correct vices but to be feared. Peter writes to them: "Do not be domineering among the clergy, but be made a pattern of the flock from the heart." Hence Gregory also writes in the *Moralia*, Book XIX, part 4, chapter 23:

C. XIV. Meekness and strictness are not to be separated from one another.

For there are some so strict that they lose even all meekness of kindness; and there are some so meek that they lose the rights of strict governance. Hence both are to be maintained with the greatest care by all rulers, so that they neither abandon the kindness of meekness in the vigor of discipline nor, again, the strictness of discipline in meekness, so that they may neither grow hard against the compassion of piety when they correct the contumacious nor soften the vigor of discipline when they console the minds of the weak. Therefore let the vigor of discipline rule meekness, and let meekness adorn vigor in speech; and thus let one be commended by the other, so that neither vigor is rigid nor meekness lax.

C. XV. One who is truly just has compassion upon the wretched and is indignant at delinquents.

The same [homily XXXIV on the Gospels, near the beginning]. True justice has compassion; false justice, disdain, although the just also are accustomed rightly to be indignant at sinners. But it is one

thing when this is done in the form of pride, another when it is done from zeal for discipline. For they are indignant, yet not disdainful. §1. But, on the contrary, those who are accustomed to take pride in false justice despise everyone else, descend with no mercy to those who are weak, and the more they do not believe themselves to be sinners, the worse sinners they become.

C. XVI. Sinners are to be provoked by meekness, not cast away by austerity.

Likewise Jerome on Jeremiah. "Withdraw," they say, "you polluted persons; withdraw, depart; do not touch us; do not communicate with us." Such speech does not illuminate the blind, does not heal the sick, does not cure the weak, but rather kills him and casts the person in peril into despair. For good rulers, weighing the weaknesses of others from their own weakness, strive to rescue sinners from the snare of error through the relief of humility and meekness rather than to drive those wavering into the pit of perdition through austerity. Hence the teacher of the gentiles says: "I became weak to the weak."

C. XVII. God's wrath rages against the people when a preacher flatters delinquents and does not correct them.

The same. But this is not to be passed over idly, that when one person sins wrath comes upon the whole people. How does this happen? When priests who preside over the people wish to appear benevolent toward delinquents and, fearing the tongues of sinners lest perhaps they speak badly of them, forget priestly severity and are unwilling to fulfill what is written: "Reprove the sinner before everyone, so that the rest may have fear," and again: "Remove the evil from among yourselves." Nor, kindled with zeal for God, do they imitate the Apostle saying: "I handed such a person over to Satan for the destruction of the flesh, so that the spirit may be saved." Nor do they strive to fulfill that evangelical command that, if they see one sinning, they should first admonish him secretly, afterward also with two or three witnesses; but if he shows contempt and is not amended after the correction of the Church, they should cast him out of the Church and hold him as a gentile and publican. And while they spare one, they contrive the destruction of the universal Church. What goodness is this, what mercy, to spare one and bring everyone into danger? For the people are polluted by one sinner. Just as the whole flock is infected by one diseased sheep, so also, when one person either fornicates or commits any other crime whatsoever, the whole people are polluted. GRATIAN. Hence it is also said elsewhere: "Let piety exhibit the ruler as a mother to subjects, but discipline as a father." Part IV. One who wounds the conscience of the weak with useless speech is also called a striker. Hence Pope Anacletus [epistle II to the Bishops of Italy]:

C. XVIII. One who strikes the conscience of the weak with incautious speech is called a striker.

That teacher is indeed called a striker who strikes the conscience of the weak with useless speech. Therefore, it is fitting that you and all the faithful hold to the faithful word that is according to doctrine, so that one may be able to console in sacred doctrine, reprove those who contradict, and strengthen those who live rightly and hold the right faith.

Distinction XLVI

GRATIAN. Part I. It follows: "not contentious." For nothing is more shameless than the arrogance of the unlearned, who think garrulity is authority and, ready for quarrels, thunder proudly against subjects, which manifestly proceeds from the arrogance of pride. Hence Gregory writes in the *Moralia*, Book XXIII, part 5, chapter 12 [c. 13, §23 and 24, on c. 33 of Job]:

C. I. The arrogant do not know how to present humbly the things they teach.

The teaching of the arrogant has this as its peculiar characteristic: they do not know how to present humbly what they teach, and they cannot minister rightly the right things they know. For in their words it is disclosed that, when they teach, they seem to themselves to reside as though upon a certain summit of loftiness, and they look down upon those whom they teach as though placed far beneath them in the depths; they deign to speak to them not by counseling but scarcely even by dominating. But the Lord rightly says to these through the Prophet: "You commanded them with austerity and with power." For those command with austerity and power who hasten not to correct their subjects calmly by reasoning but to bend them harshly by dominating. On the contrary, true teaching flees this vice of exaltation in thought all the more vehemently, the more ardently it pursues with the darts of its words the very master of exaltation. For it guards against preaching by exalted morals the one whom it assails in the hearts of hearers with sacred discourses. Part II. GRATIAN. Behold why contentious persons are prohibited from being ordained bishops. There is also another cause of this prohibition. For contentious persons either reconcile to themselves the minds of princes by flatteries, or by disparaging their brethren impose upon them the mark of infamy, or, by sowing discord among brethren, never cease making seditions; all of these things are proved damnable in prelates.

Hence Gregory writes in the *Moralia*, Book XVIII, part 4, chapter 3 [on c. 27 of Job]:

C. II. Concerning those who flatter sinners.

There are some who, while they extol the misdeeds of human beings with praises, increase the things they ought to have reproved. Hence it is said through the Prophet: "Woe to those who sew cushions beneath every elbow of the hand and make pillows beneath the head of every age." For a cushion is placed beneath the elbow, or a pillow beneath the head of one lying down, for this purpose: that he may rest softly. Therefore, whoever flatters those acting badly places a cushion or pillow beneath the head or elbow of one lying down, so that the one who ought to have been corrected for a fault may, supported by praises, rest softly in it. §1. Hence again it is written: "He built the wall, but they plastered it." For by the name of a wall the hardness of sin is designated. Therefore, to build a wall is for someone to construct against himself the obstacles of sin. But those who flatter persons committing sins plaster the wall, so that what those persons build by acting perversely the flatterers render, as it were, shining. §2. But just as a holy man does not judge evil things concerning the good, so he refuses to judge good things concerning the evil, saying: "Far be it from me that I should judge you righteous; until I fail, I will not depart from my innocence." Hence it is also read in the Fourth Council of Carthage [c. 56]:

C. III. Let a cleric who is a flatterer or betrayer be degraded from office.

Let a cleric who is found to devote himself to flatteries and betrayals be degraded from office.

C. IV. Let those who cast unproved accusations against their brethren be excommunicated by the bishop.

Likewise [from the same Council, c. 55]. Let the bishop excommunicate accusers of the brethren; and if they amend the vice, let him receive them into communion, but not into the clergy.

C. V. Let an abusive cleric be removed from office; let a buffoon who envies the advancement of his brethren not be promoted.

Likewise from the same [Council, c. 57]. Let an abusive cleric, especially among priests, be compelled to ask pardon. If he is unwilling, let him be degraded and never recalled to office without satisfaction.

C. VI. Concerning the same.

Likewise [from the same Council, c. 60]. An irreverent cleric and jester with shameful words is to be withdrawn from office.

C. VII.

Likewise [from the same, c. 54]. Let a cleric who envies the advancement of his brethren not be promoted while he remains in the vice.

C. VIII. Those who devote themselves to seditions are not to be ordained.

Likewise [from the same, c. 67]. We establish that seditious persons are never to be ordained clerics, just as neither usurers nor avengers of their own injuries are to be ordained.

C. IX. Clerics are by no means permitted to exact usury.

Likewise from the Council of Laodicea [c. 5]. Part III. Ministers of the altar, or those established in priestly order, are not permitted to lend at interest or to receive usury or profits that are called sesquiples.

C. X. Let a cleric be a lender at interest neither in his own name nor another's.

Likewise Pope Leo [to the Bishops throughout Campania, epistle I, c. 4]. Let no cleric attempt to practice lending at interest in another's name, just as he may not in his own. For it is unbecoming to expend and practice one's own crime for the advantages of others. But we ought to regard and practice only this interest: that we may be able to receive from the Lord, who bestows things that remain manifoldly and perpetually, what we mercifully give here.

Distinction XLVII

GRATIAN. The reason usurers are prohibited from being ordained at the end of this chapter is that those who practice usury are proved to serve cupidity; but the covetous are prohibited by the Apostle from being ordained, because such persons would easily deviate from what is just. Hence it is read in the Canons of the Apostles [c. 44]:

C. I. Unless he ceases, a deacon, priest, or bishop exacting usury is to be deposed.

Let a bishop, priest, or deacon exacting usury from debtors either cease or certainly be deposed.

C. II. Let one exacting usury, whether a cleric or one subject to a rule, be cast down.

Likewise from the Council of Nicaea [c. 17]. Since many established under a rule pursue avarice and shameful profits and, forgetful of divine Scripture, which says, "He has not given his money at usury," exact hundredths when making a loan, the holy and great synod justly decreed that, if anyone after this definition is found receiving usury, or pursuing some invention or transacting business in any manner whatsoever, or exacting *hemiolia*, that is, sesquiples, or devising absolutely any such thing for the sake of shameful profit, he is to be cast down from the clergy and held alien to the rule. Hence Gregory also writes concerning lovers of the world in Book XIX of the *Moralia*, part IV, chapter 35, saying:

C. III. Those serving temporal profits are proved by no means to serve God.

All lovers of this world are strong in earthly matters, weak in heavenly ones. For temporal glory they desire to labor even unto death, and for perpetual hope they do not persist even a little in labor. For earthly profits they tolerate any injuries, and for a heavenly reward they refuse to bear the insults of even the slightest word. They are strong enough to stand before an earthly judge even for the whole day, but in prayer before the Lord they grow weary in the space of even one hour. Often they tolerate nakedness, abasement, and hunger to acquire riches and honors, and through abstinence they torment themselves for those things they hasten to attain; but they conceal themselves from laboriously seeking heavenly things all the more, the more slowly they think those things will be repaid. §1. Therefore, after the manner of other trees, they are broad below and narrow above, because they remain strong in lower things but fail in higher ones. On the contrary, by the quality of palms is designated the advancing life of the just, who are by no means strong in earthly desires and weak in heavenly ones, but show themselves zealous for God by a longer and more extended measure than they remember having been for the world. §2. For when it is said to certain persons through our preacher, "I speak in human terms because of the weakness of your flesh. For just as you presented your members to serve uncleanness and iniquity unto iniquity, so now present your members to serve justice unto sanctification," he undoubtedly condescends to their weakness, as if it were said to them more openly: If you can do no more, at least be such in the fruit of good works as you formerly were in the practice of vices, lest the holy freedom of charity hold you weaker than the practice of earthly pleasure held you strong in the flesh.

C. IV. Usurers ought not to be promoted to sacred orders.

Likewise Gregory to the citizens of Naples [Book VIII, epistle 40]. Know, moreover, that it has reached us concerning Peter that he gave solidi at usury. You ought to investigate this with all subtlety; and if it is established thus, elect another and withdraw yourselves from a person of this kind without delay. For we impose hands upon lovers of usury for no reason. But if, after a subtle investigation has been held, you judge this to be false—because his person is unknown to us, and we do not know whether what has been reported to us concerning his simplicity is so—it is necessary for him to come to us with a decree made by you, so that, examining his life and morals more

solicitously, we may also learn his understanding, and so that, if he proves suitable for this judgment, with the Lord's help we may fulfill your desires concerning him.

C. V. Let a cleric who is discovered receiving usury be degraded.

Likewise from the Council of Elvira [c. 20]. If any cleric has been discovered receiving usury, it was resolved that he be degraded and made to abstain.

C. VI. A priest ought neither to be entangled in error nor violated by cupidity.

Likewise Bishop Leo [to Anatolius, Bishop of Constantinople, epistle LI]. Part II. Just as a catholic man, and especially a priest of the Lord, ought to be entangled in no error, so he ought to be violated by no cupidity, holy Scripture saying: "Do not go after your desires." A mind greedy for power knows neither how to abstain from prohibited things, nor to rejoice in things conceded, nor to grant consent to piety.

C. VII. One who does not cut cupidity away from himself cannot adhere to the author of goods.

Likewise Gregory [Book VII, epistle 100]. We cannot adhere to the author of goods in any other way unless we cut away from ourselves cupidity, which is the root of all evils.

C. VIII. An avaricious person invades the goods of all whose necessities he is able to relieve.

Likewise Ambrose [Sermon LXXXI] concerning what is written in the Gospel: "The field of a certain rich man brought forth abundant fruits." Just as those who through madness have been transported in mind no longer see the things themselves but the phantasms of their passion, so also the mind of the avaricious person, once bound by the chains of cupidity, always sees gold, always silver, always calculates revenues, gazes upon gold more gladly than upon the sun; his very prayer and supplication to the Lord seeks gold. And a little later: §1. Sometimes also, by the most wicked art of usury, gold is born from gold itself. But neither satiety nor an end will ever come to cupidity. And below: §2. But he says: What injustice is there if, while I do not invade another's possessions, I preserve my own more diligently? O shameless thing to say! You call them your own? Which things? From what stores did you bring them into this world? When you entered this light, when you came forth from your mother's womb, with what resources, I ask, and with what assistance did you enter, provided? And a little later: §3. Let no one call his own what is common, when more than would suffice has been taken and violently obtained. And below: §4. Is God unjust, so that he does not distribute the supports of life equally to us, so that you indeed should be affluent and abounding while others should lack and be in need? Or is it rather for this reason: because he wished both to confer upon you proofs of his kindness and to crown another through the virtue of patience? But you, having received the gifts of God and gathered them into your bosom, think you do nothing unjust if you alone possess the supports of the lives of so many? For who is so unjust, so avaricious, as one who makes the nourishment of many not his use but his abundance and luxuries? For it is no less a crime to take from one who has than, when you can and abound, to deny the needy. The bread you retain belongs to the hungry; the garment you shut away belongs to the naked; the money you bury in the earth is the redemption and release of the wretched. Therefore, know that you invade the goods of as

many persons as you could furnish with what you wish. Part III. GRATIAN. It is also necessary that one who is to be ordained "preside well over his own house"; that is, if in the lay habit he has had a wife or children, let him provoke them from vices toward the pursuit of virtues both by word and example, so that he may first exact from his household what he will afterward command the peoples. Hence the Apostle writes to the Ephesians that they should love their wives as their own bodies and not provoke their children to wrath, but nourish them in every discipline and correction of the Lord. Hence when, writing to Timothy, he had said, "one presiding well over his own house," he immediately added: "having children subject to him in all chastity, not under an accusation of luxury." For one who dwells together with such persons does not have the boldness to reprove others. Hence it is read concerning blessed Job that he offered daily sacrifices to God for his children, offering holocausts for each of them; he bound them together into one by so great a perfection of charity that each of them on his own day prepared a banquet for his brethren and equally invited his three sisters to feast with him. Because Eli neglected to do this and, overcome by false piety, was unwilling to strike his delinquent sons, as is read in the Book of Kings, before the strict judge he struck himself together with his sons by a cruel condemnation; hence it is said to him by the divine voice: "You honored your sons more than me." Hence David also, exercising kindness and not the severity of discipline toward his sons, learned by experience that the youth of those whose boyhood he had permitted to be wanton through wandering license was destructive. For one of them, corrupting his sister by rape, was slain by her brother, namely Absalom, amid the feast that he had deceitfully prepared for his brethren. But Absalom, after he obtained pardon from his father, expelled him from the kingdom, went in to his concubines, and finally, pursuing his father through the pathless places of the wilderness, became caught in an oak and thus perished suspended. Hence Paul also writes to Timothy, saying: "One who has no care for his own and especially those of his household has denied the faith and is worse than an unbeliever." Rightly, therefore, one who does not know how to preside over his own house is prohibited from being ordained bishop, because if he is not faithful in the least matter, concerning which a more familiar care ought to be in him, how will he display solicitous diligence in the Church of God, where there are so many persons and strangers? Hence Jerome says: "For the just person is not polluted by the vices of his children; rather, freedom is reserved by the Apostle for the ruler of the Church, so that he may be such a person as does not fear to reprove outsiders on account of the vices of his children." Part IV. §1. This will happen when there is nothing imputed to him. For since the steps of a person are directed by the Lord and his ways are not in the person, he can indeed reprove, but he cannot correct; he can knock, but not open; restrain the hands, but not change the mind. Hence Augustine to Vincentius the Donatist [epistle CXXXVII]:

C. IX. The discipline of the good cannot change the morals of everyone.

However much the discipline of my house may keep watch, I am a human being and live among human beings; nor do I dare arrogate to myself that my house is better than Noah's ark, where nevertheless among eight human beings one reprobate was found, or better than the house of Abraham, where it was said: "Cast out the bondwoman and her son," or better than the house of Isaac, to whom it was said concerning the two twins: "I loved Jacob, but Esau I hated." §1. But I confess simply to your charity before the Lord our God, who is witness over my soul, that since I began to serve God, just as I have with difficulty experienced persons better than those who advanced in monasteries, so I have not experienced persons worse than those who fell away in monasteries.

C. X. The insults of the lost ought not to move us from the way of rectitude.

Likewise Pope Cornelius to Cyprian. As far as pertains to us, it befits our conscience, brother, to take care lest anyone perish from the Church through our fault. But if anyone has perished voluntarily and by his own crime, and has been unwilling to do penance and return to the Church, we believe that we, who counsel their health, will be blameless on the day of judgment, and that those alone will remain in punishments who were unwilling to be healed by the healthfulness of our counsel. Nor ought the insults of the lost to move us to depart from the right way and the certain rule, as the Apostle also instructs, saying: "If I pleased human beings, I would not be Christ's servant."

Distinction XLVIII

GRATIAN. Part I. "Neophytes" are also prohibited from being ordained bishops, so that one who yesterday was a catechumen may not today become a bishop; one who yesterday was in the theater may not today sit in the church; one who in the evening was in the circus may not today minister at the altar; one who a short time ago was a patron of actors may not today be a consecrator of virgins. The cause of this prohibition, according to the Apostle, is lest, exalted in pride as though the Christian religion had very great need of him, he fall into the ruin of the devil. For the priest made in a moment does not know humility, the manners of persons, or how to despise himself; he has not fasted, has not wept, has not corrected himself, has not distributed to the poor. Those who in a point of an hour become masters before they have yet become disciples fall into arrogance, which is the ruin of the devil; and, as Innocent says, "it is wretched for one to be made a master who has not yet learned to be a disciple." Hence it is read concerning the same persons in the Council of Nicaea [c. 2]:

C. I. A neophyte is not to be ordained bishop.

Since many things have been done contrary to the rule, whether through necessity or from any cause whatsoever, so that persons recently from a gentile life, still catechumens or newly instructed, immediately came to spiritual baptism and, as soon as they were baptized, were also advanced to the episcopate or priesthood, it has therefore rightly seemed good that henceforth no such thing be done. For time is needed for one to be a catechumen, and after baptism he needs much probation. For the apostolic precept is evident, saying: "Not a neophyte, lest perhaps, exalted in pride, he fall into the judgment and snare of the devil." But if, in the preceding time, he committed some mortal sin and is convicted by two or three witnesses, one of this kind will cease from the clergy. If anyone acts beyond these things, as one acting contrary to the statute of the holy council, he himself will also endanger the status of his clergy. GRATIAN. Today, however, those newly approaching the profession of sacred religion are called neophytes. Hence blessed Gregory writes [Book VII, epistle 110], saying:

C. II. Who are called neophytes.

Just as one who at the beginning of the holy faith had been planted by instruction was called a neophyte, so now one is to be held a neophyte who, suddenly planted in the habit of religion, has crept in to canvass for sacred orders. §1. Therefore, one must ascend to orders in an ordered manner. For one who, setting aside the steps, seeks an ascent over precipices to the heights of the highest place seeks a fall. We know, moreover, that walls that have been built do not receive the weight of

beams before they have dried from the moisture of their newness, lest, if they receive the weights before they are made firm, they bring the whole structure to the ground at once.

Distinction XLIX

GRATIAN. Behold from which vices those who are to be ordained bishop ought to be immune. For those who are prepared as intercessors for the people before God must merit his grace by living well. For, as Gregory says in the *Pastoral Rule*: §1. "It must be solicitously feared lest the one who is believed able to placate the wrath of God should himself merit it by his own guilt. For we all clearly know that, when one who displeases is sent to intercede, the mind of the angry person is provoked to worse things. Therefore, let one who is bound by earthly desires take care lest, more grievously kindling the wrath of the strict judge, while he delights in a place of glory, he become for his subjects an author of ruin. Accordingly, let each person carefully measure himself and not dare to assume a place of governance if a vice still reigns damnably in him; nor let one whom his own crime corrupts desire to become an intercessor for the faults of others."

C. I. One who is stained by vices must not offer sacrifice to God.

Hence indeed it is said to Moses by the heavenly voice in Leviticus: "Speak to Aaron: A man of your seed throughout their families who has a blemish shall not offer bread to his God, nor approach his ministry." There it is also immediately added: "If he is blind, if lame, if with a small or large or crooked nose, if with a broken foot, if maimed, if hunchbacked, if bleary-eyed, if having a white film in his eye, if he has chronic scabies, if impetigo on his body, or if he is burdened." §1. For blind is one who does not know the light of heavenly contemplation, who, pressed by the darkness of the present life, while he does not at all behold by loving it the light that is to come, does not know in what direction to extend the steps of his work. Hence indeed it is said as Hannah prophesies in the Book of Kings: "He will preserve the feet of his saints, and the impious will be silent in darkness." §2. Lame, however, is one who indeed sees where he ought to go but, through weakness of mind, is not able perfectly to hold to the way of life that he sees; because, evidently, while someone is not raised to the state of virtue from a wavering habit, the step of his work does not effectively follow where his desire strives. Hence indeed Paul says to the Hebrews: "Raise up the hands that hang down and the weakened knees, and make straight steps for your feet, so that what is lame may not go astray, but rather be healed." §3. One with a small nose, moreover, is one who is not fit to preserve the measure of discretion. For by the nose we distinguish fragrances and stenches. Therefore discretion is rightly expressed by the nose, through which we choose virtues and reject offenses. Hence also in praise of the bride it is said in the Song of Songs: "Your nose is like the tower that is in Lebanon," because assuredly holy Church, through discretion, perceives from what particular causes temptations arise and from on high detects the coming wars of the vices. But there are some who, while unwilling to be thought dull, often exercise themselves more than is necessary in certain investigations and are deceived by excessive subtlety. Hence here too it is added: "or with a large or crooked nose." For a large and crooked nose is immoderate subtlety of discretion, which, while it grows more than is fitting, itself confounds the rectitude of its action. §4. One with a broken foot or hand, moreover, is one who is altogether unable to go upon the way of the Lord and, wholly devoid of good acts, remains idle, so that he does not hold to them at least with weakness, as the lame man does, but exists as one entirely alien to them. §5. Hunchbacked, however, is one whom the weight of earthly

solicitude presses down, so that he never looks toward heavenly things but attends only to those things that are trodden upon below; and even if he should at some time hear something of the good of the heavenly homeland, weighed down, assuredly, by the weight of perverse habit, he does not lift the face of his heart, since he is unable to erect the posture of his thought, whom the practice of earthly solicitude keeps bent. From the likeness of these the Psalmist says in Psalm XXXVII: "I am bowed down and humbled in every way." Truth herself also reproves their fault when she says in Luke: "But the seed that fell among thorns—these are those who have heard and, going on, are choked by the cares and riches and pleasures of life, and they bring forth no fruit." §6. Bleary-eyed, however, is one whose natural capacity indeed flashes forth toward knowledge of the truth, but carnal works nevertheless obscure it. In bleary eyes the pupils are healthy, but the eyelids, weakened by a flowing humor, grow thick; and because the pupil is worn by their continual discharge, even its keenness is impaired. And there are some whose practice of carnal life wounds their perception, who by natural capacity could have seen right things subtly, but through the practice of depraved acts grow dim. Therefore one is bleary-eyed whose perception nature has sharpened but whose depravity of conduct confounds; to such a one it is well said through the Angel in the Apocalypse: "Anoint your eyes with eye-salve, so that you may see." For we anoint our eyes with eye-salve so that we may see when, for knowing the brightness of the true light, we aid the keenness of our understanding with the medicine of good work. §7. One has a white film in his eye, however, who is not permitted to see the light of truth because he is blinded by arrogance concerning his wisdom or justice. For the pupil of the eye, being black, sees; while bearing a white film it sees nothing, because evidently the perception of human thought, if it understands itself to be foolish and sinful, apprehends knowledge of inward brightness. But if it attributes to itself the whiteness of justice or wisdom, it excludes itself from the light of heavenly knowledge, and it by no means penetrates the brightness of the true light to the degree that it exalts itself before itself through arrogance, as is said of certain persons in Romans: "For, saying themselves to be wise, they became fools." §8. One has chronic scabies, however, over whom the wantonness of the flesh rules without cessation. For in scabies the heat of the inner organs is drawn to the skin, by which lust is rightly designated, because if the temptation of the heart leaps forth as far as action, assuredly the inward heat breaks forth as far as the scabies of the skin, and now wounds the body outwardly, because while pleasure is not restrained in thought, it rules also in action. For Paul was, as it were, taking care to wipe away the itching of the skin when he said to the Corinthians: "Let no temptation take hold of you except what is human," as if he were saying openly: It is indeed human to suffer temptation in the heart, but demonic to be overcome in the contest with temptation and in action. §9. Whoever is ravaged in mind by avarice also has impetigo on the body, which, if it is not checked in small things, assuredly spreads without measure. For impetigo occupies the body without pain and, growing without the weariness of the one occupied, disfigures the beauty of the limbs, because avarice both delights, as it were, and ulcerates the mind it has captured; while it sets before thought whatever things are to be acquired, it kindles it toward enmities, and it causes no pain in the wound, because it promises abundance from the fault to the agitated mind. But the beauty of the limbs is lost, because through it the beauty of the other virtues also is corrupted; and it makes, as it were, the whole body rough, because it trips up the mind through all things, as Paul bears witness, who says to Timothy: "The root of all evils is covetousness." §10. Burdened, however, is one who does not practice baseness in deed but is nevertheless weighed down in mind by continual thought of it without restraint; one who is indeed

by no means dragged as far as the wicked deed, but whose spirit delights in the pleasure of lust without any goad of resistance. For the defect of being burdened occurs when the humor of the inner organs descends to the genitals, which indeed swell with troublesome disgrace. Therefore burdened is one who, flowing down with all his thoughts toward wantonness, carries the weight of baseness in his heart; and although he does not perform depraved works, he nevertheless is not lifted from them in mind, nor is he able to rise openly to the practice of good work, because a base weight burdens him in secret. §11. Therefore, whoever is subdued by any of these vices is prohibited from offering loaves to the Lord, lest indeed one whose own offenses still devastate him be able to wash away the offenses of others. §12. Since, therefore, we have shown in a few words how a worthy man may come to the pastoral office of teaching, and how an unworthy man should fear it, let us now show how one who has worthily attained it ought to live in it.

C. II. One who is unlearned, seeks earthly gains, or is vicious must not be ordained.

Likewise Jerome on Malachi [on c. 1, vv. 7–8]. Priests despise the name of the Lord and, insofar as it lies with them, offer polluted bread, who approach the altar unworthily and who presume to obtain the priesthood after a gift has been given. One also pollutes the bread who distributes the doctrine of the Lord badly among the people, and one who honors the powerful and despises the poor. And below: §1. "If you offer what is blind for sacrifice, is it not evil?" etc. Accused above concerning the loaves, they are now accused concerning the victims. One offers a blind animal who ordains an unlearned man in place of a learned one and makes a master of one who could scarcely have been a disciple. One offers a lame animal who appoints one seeking earthly gains, as one who sets a foot in different directions, one in divine matters and the other in carnal matters, against whom that statement from the Book of Kings may be brought: "How long do you limp between two sides?" One offers a sick animal who regards a vicious man as religious and who approves a slow and idle man as patient, saying that he should be reproved for negligence. For it is unworthy to give to God what a human being disdains.

Distinction L

GRATIAN. Part I. From the foregoing authorities it has been clearly demonstrated that those entangled in various crimes cannot be ordained as priests. But it is now asked concerning the same persons whether, after penance has been performed, they are able either to remain in their own orders or to ascend to higher grades. By many authorities those entangled in various crimes are cast down from their own orders and prohibited from access to higher ones. Hence Gregory says to Constantine, Bishop of Milan [Book IV, epistle 17]:

C. I. Those who have fallen cannot be restored to their order.

If permission to return to their order is granted to those who have fallen, the force of canonical discipline is undoubtedly broken, while someone does not fear to conceive desires for depraved action because of hope of returning. And a little later: §1. Endeavor before all things that no supplication move you in any way to recall to sacred order those who have fallen, lest punishment of this kind be believed not to have been established, but merely postponed for a time.

C. II. One who falls after ordination shall remain deposed.

Likewise Pope Martin [I] to Bishop Amandus. One who has once fallen into a lapse after his ordination shall thereafter already be deposed and will be able to obtain no grade of the priesthood.

C. III. A priest can by no reason be restored to sacred order after a lapse.

Likewise Pope Gregory to Bishop Sabinus [Book VII, epistle 25]. Let your fraternity know that the priest concerning whom it consulted us through the mission of the bearer of these presents can by no reason either remain in sacred order after his lapse or be recalled to it. Nevertheless, he is to be dealt with more mildly, because he is said to have confessed the crime committed with ready acknowledgment.

C. IV. After homicide has been committed, priestly office cannot be administered.

Likewise John VIII to Cennemocus, Bishop of Nantes. I marvel that your poorly instructed knowledge thinks that a priest can minister in the priesthood after committing homicide and, what is more inept, wishes to persuade us to furnish assent to such presumption. For who, so demented and of such perverse judgment, would think that such a thing should be granted even after however great a penance, since it is contrary to all canonical discipline?

Therefore, deprived of the priesthood, he ought to wash away so enormous a crime with a fountain of tears, so that, healed at least by such remedies, he may be able to find the aid of salvation.

C. V. A cleric who has killed a pagan cannot be advanced to a higher grade.

Likewise Pope Nicholas. A cleric who has killed a pagan ought not to be advanced to a higher grade; he ought even to be deprived of the grade acquired, for he is a homicide. For since the soldiers of the world are distinct from the soldiers of the Church, it is not fitting for a soldier of the Church to serve the world as a soldier, through which it is necessary to arrive at the shedding of blood.

C. VI. One who has killed a pagan in defending himself shall lack priestly office.

The same to Osbald, the Quadrantine chorepiscopus. Concerning those clerics about whom you consulted us—namely, those who killed a pagan while defending themselves—whether, afterward corrected through penance, they can return to their former grade or ascend to a higher one, know that we give them no occasion and grant no license to kill any human being in any manner whatsoever. But if it should happen that a cleric of priestly order has killed even a pagan, he takes great counsel for himself if he withdraws from priestly office; and it is more satisfactory for him to serve the Lord blamelessly in this life under a lower habit than, by improperly seeking high things, to be plunged damnably into the depths.

C. VII. A bishop, priest, or deacon committing a capital crime shall fall from office.

Likewise from the Council of Agde. If a bishop, priest, or deacon has committed a capital crime, or falsified a document, or given false testimony, let him be deposed from the honor of office, be thrust into a monastery, and there, as long as he lives, receive only lay communion.

C. VIII. One who, after baptism, has been privy to homicide by deed, command, counsel, or defense shall not be ordained a cleric.

Likewise from the Council of Pope Martin [c. 26]. If anyone has married a widow or one left by another, let him not be admitted to the clergy. But if he has slipped in, let him be cast down. Likewise, if after baptism he has been privy to homicide by deed, command, counsel, or defense and has come to clerical status through some surreption, let him be cast down and receive communion at the end of his life.

C. IX. Those who have fallen from sacred orders cannot be restored.

Likewise Gregory to Januarius, Bishop of Cagliari [Book III, epistle 26]. It has come to us that some who have fallen from sacred orders are recalled to the office of their ministry either after penance or before penance. This we altogether prohibit, and the most sacred canons also contradict it in this matter. Therefore, one who has fallen into a sin of the flesh after receiving sacred order shall lack sacred order and shall not approach the ministry of the altar.

C. X. Concerning the same.

The same to Venantius, Bishop of Luni [Book IV, epistle 5]. When your fraternity comes to the island of Gorgona, let it investigate what has been reported to us concerning Saturninus, a former priest. For it has come to us that, after he had fallen from sacred orders and had been cast down from his priestly order, he presumed to approach the performance of the ministry of the priesthood and to offer sacrifices to almighty God. If your fraternity finds that this was so done, let it deprive him of participation in the sacred body and blood of the Lord and reduce him to penance, so that he may remain in that excommunication until his last day and receive only viaticum at the time of his departure. But if your fraternity knows him to perform such penance that it ought justly to show him mercy by receiving him into communion among the laity even before his departure, we place this within the power of your fraternity. And below: §1. Moreover, responding to the inquiries of your fraternity, we decree that the deacon and abbot from Porto Venere whom you indicate to have fallen ought not and cannot in any manner be recalled to sacred order. It is fitting that, deprived of sacred order, he be assigned by you to penance; and if his subsequent deeds and manner of life merit it, let him obtain the first place for standing among the other monks wherever you decree. The subdeacons also whom a similar fault binds, irrevocably deposed from their office, shall receive communion among the laity. At Porto Venere, moreover, you will ordain in place of the fallen deacon another who ought to fulfill this office. But we have decreed to ensure in writing that Saturninus, the former priest, never presume to approach the ministry of sacred order; yet we have permitted him to exercise solicitude for the monasteries on the islands of Gorgona and Capraia and to remain in his present state without opposition from anyone.

C. XI. Another is to be ordained in place of one who has fallen.

The same [to Marinianus, Bishop of Ravenna, Book VI, epistle 39]. Since no reason permits anyone falling criminally to be recalled to the place from which he fell, and the statutes of the sacred canons do not permit a church to be vacant of a pontiff beyond three months, lest, when the shepherd has fallen, the ancient enemy by lying in wait tear apart the Lord's flock—which God forbid—your fraternity ought to consent to their entreaty and ordain a bishop in the place of the fallen one.

C. XII. One who has fallen after ordination must not handle the sacred mysteries.

Likewise Pope Martin [I, in the epistle to Amandus]. If anyone has fallen into a lapse after his ordination and has been found liable to the sin of transgression, he must be prohibited in every way from handling the mysteries of our salvation with muddy and polluted hands. Part II. GRATIAN. To the contrary, it is proved by examples and authority that after penance has been performed persons may lawfully administer their own grades and ascend to higher ones. For Miriam, Aaron's sister, after she was struck with leprosy because she had murmured against Moses, was cleansed when penance had been performed and received her former grace of prophesying. After the calf had been cast, Aaron was even consecrated as high priest. After adultery and homicide David received the spirit of prophecy and remained in his own grade. After the death of Naboth, that most holy man, Ahab, humbled through penance, remained on the royal throne. And, that we may pass over many examples of the Old Testament, Peter denied Christ and nevertheless was afterward made prince of the apostles; Paul stoned Stephen and nevertheless was chosen by God as an apostle. Many also, returning from heresy to the unity of the catholic faith, were received in their orders, while others were even promoted to the episcopal grade, such as Augustine and very many others.

[PALEA.

C. XIII. Concerning the same.

John Chrysostom was condemned by two synods of orthodox bishops, but was again restored. Marcellus, Bishop of Ancyra in Galatia, was deposed, but afterward received his own episcopate. Asclepius, condemned by a synod, afterward received his church. Lucius, Bishop of Adrianople, condemned by Pope Julius, received the church of his episcopate. Cyril, Bishop of Jerusalem, was deposed and afterward was reconciled to his church.

In a similar manner Pope Sixtus condemned Polychronius, pontiff of the same church of Jerusalem, and again he himself reconciled him. Pope Innocent condemned Bishop Photinus, but afterward restored him to his proper place in his church. Pope Gelasius, the successor of Pope Felix, reconciled Misenus, a bishop condemned by Felix, and restored him to his church. Leontius, while he was a priest, was deposed, but afterward became patriarch at Antioch. Pope Gregory IV, moreover, consecrated as bishop of the holy church of Segni Theodosius, whom Eugene his predecessor had deprived of the honor of the priesthood. Bishop Ibas, indeed, was condemned, but a holy canonical synod restored his church to him. Pope Nicholas reconciled both Rothad, bishop of the holy church of Soissons, condemned by a synod at which Charles was present, and Sophronius, Bishop of Piacenza, deservedly rejected.] Moreover, Pope Callistus [I] writes as follows concerning persons of this kind [epistle II to the Bishops of Gaul]:

C. XIV. Clerics can be restored in their orders after a lapse.

Let each person weigh his words, and let him not say to another what he does not wish to be said to himself. Hence sacred Scripture well says: "What you do not wish to be done to you, do not do to another." For we need time in order that we may do something more maturely, lest we make our counsels and works precipitous and corrupt order. §1. But if anyone has fallen in any manner, let us bear him and correct him with brotherly affection, as the blessed Apostle says: "If a man has been overtaken in any offense, you who are spiritual instruct one of this kind in a spirit of gentleness. Bear

one another's burdens, and so you will fulfill the law of Christ." §2. Moreover, holy David performed penance for deadly crimes and nevertheless remained in honor. §3. Blessed Peter also poured out most bitter tears when he repented of having denied the Lord, but nevertheless remained an apostle. And the Lord promises through the Prophet, saying: "On whatever day the sinner is converted and groans, I shall no longer remember all his iniquities." Therefore those err who think that priests after a lapse, if they have performed worthy penance, cannot minister to the Lord and enjoy their honors, if thereafter they lead a good life and worthily guard their priesthood. And those who think this not only err, but also seem to despise the keys handed down to the Church, concerning which it is said: "Whatever you loose on earth shall be loosed also in heaven." Otherwise, this sentence either is not the Lord's or is true. §4. But we believe without doubt that both priests of the Lord and the rest of the faithful can return to honors after worthy satisfaction, as the Lord bears witness through the Prophet: "Will not one who sleeps add that he may rise?" And the prophet David, performing penance, said: "Restore to me the joy of your salvation, and strengthen me with a principal spirit." For after penance he both taught others and offered sacrifice to God, giving an example to the teachers of holy Church that, if they have fallen and have performed worthy penance to God, they can do both. For he taught when he said: "I shall teach the wicked your ways, and the impious will be converted to you." He offered sacrifice to God for himself when he said: "A sacrifice to God is a contrite spirit." For seeing his crimes cleansed through penance, the Prophet did not hesitate, by preaching and making offering to the Lord, to care for those of others. §5. Therefore a man is changed from sin, rises from his fall by the grace of God, and remains in his former office according to the aforesaid authorities. Let him see that he does not lie down any further, but that the evangelical sentence remain in him which says: "Go, and now sin no more." Hence the Apostle says: "Therefore let not sin reign in your mortal body, so that you obey its concupiscences." §6. Flee, brethren, not only from holding but even from hearing a sentence that forbids mercy, because mercy is preferable to all holocausts and sacrifices.

C. XV. Priests can be recalled to their former grade after penance.

Likewise Jerome [on c. 3 of Malachi]. "And he will purify the sons of Levi; for it is time that judgment begin from the house of God," and elsewhere it is written: "Begin from my holy ones." In the sons of Levi, moreover, understand every priestly dignity. But if priests are to be purified and strained so that pure gold and silver may remain, what is to be said of the rest? When they have been cleansed and strained, then they will offer just sacrifices to the Lord, and their sacrifice that they offer for Judah and Jerusalem will please the Lord—that is, for those who confess the Lord and behold his peace in the mind—as in the days of the age and as in ancient years, so that, just as they pleased God in the beginning, so after sin and penance they may begin to please him when they have been purified from every filth of sins.

C. XVI. Those who have fallen can be restored.

Likewise Gregory to Secundinus [Book VII, epistle 53]. Your Holiness asked that we write to you authority concerning rising again to priestly office after a lapse, since you say that you have read diverse sentences of diverse canons concerning this, some allowing one to rise again and others not at all. Therefore, beginning generally from the Nicene Synod, we venerate it together with the other four, because in all their sentences they agree unanimously. But we follow the preceding Fathers

because, with God as author, we do not disagree with their sacred teaching. Therefore, beginning from the head down to the fourth ministry of the altar, we have learned that this form is to be observed: just as the greater precedes the lesser in honor, so also in crime; and he whom a greater fault follows is bound by a greater punishment, and afterward penance is believed to be fruitful. §1. For what does it profit to sow wheat and not gather its fruit, or to construct a house and not dwell there? Therefore, after worthy satisfaction, we believe that one can return to honor. §2. Running back to the fountain of mercy, let us produce the evangelical sentence: "I rejoice," he says, "over one sinner performing penance more than over ninety-nine just persons who have no need of penance." And the Lord himself bears witness that the lost sheep, the ninety-nine who had not gone astray being left behind, was to be carried back to the sheepfold on the shoulders of the pious shepherd. If the lost, wandering sheep after being found is carried on his shoulder to the sheepfold, the aforesaid ninety-nine who had not gone astray being left in the desert, why should one who has fallen not be recalled after penance to the ministry of the Church? As is said in the Apocalypse concerning a minister of the Church: "Remember whence you have fallen, and perform penance, and do your first works." For what is more grave: to commit a carnal offense, without which few are found, or to deny the Son of God by an oath? We know that the blessed Peter himself, prince of the apostles, at whose sacred body we unworthy ones sit, fell by this word. But penance followed after the denial, and mercy was given after penance, because he who foretold that Peter would deny him did not remove him from the apostolate.

C. XVII. After most severe penance those who have fallen are restored.

The same [on Ezekiel, homily IX, on c. 2]. What is this, that it is said to the Prophet lying down: "Stand upon your feet, and I shall speak with you"? He who spoke to him while lying down, why does he promise that he will speak when he is standing? But it must be known that there are some things that we ought to hear while lying down and others while standing. For it is said to one lying down that he should rise; but one standing is commanded that he ought to set out to preach. For authority to preach ought not to be furnished to us while we are still lying in the confusion of weakness. But when we now rise in good work, when we now begin to stand upright, it is fitting that we ought to be sent to preach for the gaining of others. Therefore, standing, the Prophet saw a spiritual vision and fell; falling, however, he received words of admonition that he should rise; and rising he heard the command that he should preach. For we who still stand at the summit of pride, when we have now begun to perceive something concerning fear of eternity, ought fittingly to fall to penance. And while, subtly recognizing our weakness, we lie humbly, let us rise through the consolation of the divine word to stronger works.

C. XVIII. Concerning the same.

The same [Book XVIII of the *Moralia*, c. 16, on c. 28 of Job]. Iron is taken from the earth when a strong defender of the Church is separated from the earthly activity that he previously maintained. Therefore he ought not to be despised for what he was, because he now begins to be what he was not.

C. XIX. After worthy penance former offices are received again.

Likewise Augustine. When I shall have heard them, I shall give them the strength of my spirit, and I shall fill them with my judgment and strength. Observe that in the present passage someone can teach after sin, if nevertheless he has washed away his former vices by worthy penance. Hence David, after adultery and homicide, speaks in the Psalm: "You will sprinkle me, Lord, with hyssop, and I shall be cleansed; you will wash me, and I shall be made whiter than snow." Nor is he content only with his own purity, but adds: "Restore to me the joy of your salvation, and strengthen me with a principal spirit," and when you have done this, "I shall teach," he says, "the wicked your ways, and the impious will be converted to you."

C. XX. Concerning the same.

Likewise Jerome [Book II *Against Jovinian*]. Jesus son of Josedech, the high priest, although as a type he preceded the coming of the Savior, who bore our sins and joined to himself a foreign Church from the gentiles, nevertheless according to the letter is introduced as defiled after the priesthood, and the devil stands at his right hand, and afterward white garments are restored to him.

C. XXI. Clerics corrected through penance shall receive their grade and dignity.

Likewise from the Council of Agde [c. 2]. Contumacious clerics shall be corrected by the bishops as the order of dignity permits; and if any, elated by pride in their former grade, should perhaps have despised communion, or neglected to frequent the church or fulfill their office, foreign communion shall be allotted to them, so that when penance has corrected them, being written again in the register, they may receive their grade and dignity.

C. XXII. Concerning the same.

Likewise from the Council of Pope Martin [c. 17]. If any priest or deacon is found to have sold anything from the ministries of the Church, because he has committed sacrilege it has been resolved that he not be retained in ecclesiastical order. Nevertheless, he is to be left to the judgment of the bishop as to whether he ought to be received in his grade, because many times this very matter concerning what has been contaminated from the sacrosanct altar has been left within the bishop's power.

[PALEA.

C. XXIII. Likewise Augustine to Boniface.

A priest is well able to be restored to his honor after penance has been performed, although on this matter diverse persons think diverse things, saying that he cannot be restored to honor. But this was said because of the feigned penances of certain persons and because of dignities of honors deliberately sought.]

[PALEA.

C. XXIV.

Indeed, if a priest falls, he is able and has a place of restoration to his honor after worthy penance has been performed, as the Prophet bears witness, who says: "Will not one who falls add that he may

rise?" And blessed Gregory says this to Secundinus the recluse, his friend: We have an argument for this even from the Prophet himself, who, although after committing adultery he perpetrated homicide, nevertheless afterward, when worthy penance had been performed, was restored by God's grace to his former office.] Part III. GRATIAN. Let us therefore consider briefly how the dissonance of authorities of this kind may be recalled to concord. There are some whom not hatred of the crime, but fear of lowliness, loss of their own grade, and ambition for a higher one compel to penance. The sacred canons cast these persons down irrecoverably, because one who seeks pardon by a simulation of penance or desire for honor does not obtain it from God, nor does he merit restoration from the Church. Hence Augustine writes to Boniface [epistle L]:

C. XXV. Why it was established in the Church that after penance someone should not return to clerical status.

That it should be established in the Church that no one, after penance for some crime, should receive clerical status, return to clerical status, or remain in clerical status, was done not from despair of indulgence but from the rigor of discipline. Otherwise one will argue against the keys given to the Church, concerning which it was said: "Whatever you loose on earth shall be loosed also in heaven." But lest perhaps a spirit swollen with hope of ecclesiastical honor should perform penance proudly even for other crimes, it was most severely resolved that, after penance performed for a damnable crime, no one should be a cleric, so that through despair of temporal elevation the medicine of humility might be greater and truer. For holy David performed penance for deadly crimes and nevertheless persisted in his honor; and blessed Peter, when he poured out most bitter tears, certainly repented of having denied the Lord, and nevertheless remained an apostle. But the diligence of those who came later is not therefore to be thought superfluous: where nothing was subtracted from salvation, they added something to humility, by which salvation might be more safely fortified, having experienced, I believe, the feigned penances of certain persons through their deliberate pursuit of the powers of honors. For experiences of many diseases compel the discovery of many medicines. Yet in causes of this kind, where through grave ruptures of dissensions there lies not the danger of this or that man, but the slaughter of peoples, something must be subtracted from severity, so that sincere charity may come to the aid of curing greater evils.

C. XXVI. The benefit of restoration ought not to be granted except after penance.

Likewise from the epistle of the Roman Clergy sent to Pope Cyprian. Far be it from the Roman Church to abandon its vigor with so profane a facility and dissolve the sinews of severity after the majesty of the faith has been overturned, so that, while the ruins of the overthrown brethren still not only lie but even fall, remedies of communion, assuredly destined to be of no profit, should be furnished with excessive haste. For where will the medicine of penance be able to proceed, if even the physician himself, by cutting short the penance, indulges the dangers? This is not to heal but, if we wish to speak the truth, to kill.

C. XXVII. Pardon cannot be granted to the impenitent.

Likewise Cyprian, *On the Lapsed*. If anyone with rash and disorderly haste thinks that he can give remission of sins to all, or dares to annul the precepts of the Lord, he not only profits the lapsed nothing but harms them. It is to have provoked wrath, not to have kept the sentence; not to entreat

the mercy of the most pious Lord, but, with the Lord despised, to presume upon one's own facility. And below: §1. The martyrs command that certain things be done; if they are just, if lawful, if not contrary to the Lord himself and to God's priest, they are to be done; if the confession of the one obeying is ready and prompt, if the moderation of the penitent is religious. The martyrs command that certain things be done; but if what they command is not written in the law of the Lord, it comes first that we know that they have obtained from God the things they ask, and then that we do what they command. For what was promised by a human promise cannot immediately be seen to have been granted by the divine majesty. For Moses also petitioned for the sins of the people, and nevertheless, when he petitioned, he did not obtain pardon for the sinners.

C. XXVIII. Who are to be restored after a lapse, and who are not.

Likewise Isidore to Bishop Massanus. Isidore the Bishop to the lord holy and blessed in merits, brother Massanus the bishop. Concerning what your venerable fraternity made known in its letters—namely, that in canon XIX of Ancyra it is read that after a bodily lapse the grade of honor is to be restored after penance, but elsewhere it is read that after an offense of this kind the merit of the ancient order is by no means to be restored—this diversity is resolved in this manner. For the canons command those to return to their former grades whom the satisfaction of penance or a worthy confession of sins has preceded. By contrast, those who are neither corrected from the vice of corruption and who strive with a certain superstitious rashness to vindicate that very carnal offense which they commit receive neither the grade of honor nor the grace of communion. Therefore the sentence is to be determined in such a way that it is necessary for those to be restored to the place of honor who through penance merit the reconciliation of divine piety. Those who through the correction of penance are known to have received the remedy of life not undeservedly obtain the state of the dignity they had acquired. But lest this perhaps be more ambiguous, the sentence is confirmed by divine authority. The prophet Ezekiel, under the figure of transgressing Jerusalem, shows that after the satisfaction of penance the former honor is restored: "Be confounded," he says, "O Judah, and bear your ignominy." And a little later: "And you," he says, "and your daughters, return to your antiquity." §1. When he said "be confounded," he showed that after the work of sin each person ought to blush and, after confession for the crimes admitted, sink a shamefaced brow prostrate to the ground, because he perpetrated a work worthy of confusion. Then he commanded that after ignominy —that is, the casting down of his name or dignity—he return to his antiquity. Therefore, while each person after the work of his confusion is confounded and, bearing ignominy, mourns his deposition with humility, he will be able, according to the Prophet, to be recalled to his prior state. Likewise John the Evangelist, among certain other things, writes similar words to the Angel of the church of Ephesus: "Remember whence you have fallen, and perform penance, and do your first works; otherwise I shall come to you and move your lampstand from its place." §2. Behold, insofar as I was able, I have explained through sacred testimonies the plainly ancient sentence of the Council of Ancyra, full of authority, showing that one can be restored in his own order who knows how to bewail his own offenses through the satisfaction of penance. But know that one who neither mourns the things he has done but commits things to be mourned without any shame of religion or fear of divine judgment can in no manner be restored to his former grade. §3. At the end of this epistle, moreover, I thought this should be added: whenever a discordant sentence is found in the acts of councils, the sentence of that council whose authority stands as more ancient and more powerful

should rather be held. GRATIAN. Therefore, whoever has worthily offered penance to God for his crimes can, by the authority of Gregory, Jerome, Augustine, and Isidore, receive the grade of his former dignity. But those who offer false penances to God not from hatred of the crime but from fear of lowliness or ambition for honor will in no way be able to be restored to the grade of former honor. But that statement of Pope Hormisdas is objected, who writes to all the Bishops throughout the provinces:

C. XXIX. A deacon or priest found in adultery cannot be restored.

If any deacon or priest, after receiving the Levitical blessing, is found incontinent with his wife, let him be cast from his office. §1. Behold, it is manifestly established that, according to the rubrics of the ancient Fathers composed at the prompting of the Holy Spirit, and according to the sentences of the 318 bishops—which the Gallican canons also seem to contain—clerics found in adultery, whether themselves confessed or convicted by others, cannot return to honor. Because perhaps there are some to whom, from excessive piety, the severity of the holy Fathers written above is not pleasing, let them know that they reprove or condemn the sentences of the 318 bishops who also established the other canons. But perhaps there is greater piety in them than in the aforesaid 318 bishops? Is there greater mercy in them than in holy Pope John? Greater charity than in the other holy priests who, by their determinations, considered remedies for the churches according to this example? And therefore let them either consent with ready will to their precepts or know that they are contrary and hostile to them all. What is this goodness hostile to justice—to caress criminals and keep their wounds unhealed until the day of judgment? §2. But if we saw them perform the most rigorous penance through many years, then we could both take counsel for their salvation and ought to temper the statutes of the canons. But when in some there appears neither compunction of humility nor persistence in prayer, nor do they imitate blessed David, who says: "I shall wash my bed each night; with my tears I shall water my couch"; and that: "I ate ashes like bread and mingled my drink with weeping"; nor do we see them devote themselves to fasts or readings, we can recognize with how great a negligence, with how great a torpor and security hostile to their own soul they would remain if they returned to their former grades or honors, believing that God has forgiven them without worthy penance having been performed, just as the priests seem to have indulged them. Truly I say that those very persons whom we seem to indulge with dangerous and false mercy, when they come before the tribunal of Christ to be condemned for such great sins, will plead their case against us, saying that, while we either feared the harshness of their tongue or willingly accepted their false blandishments and dangerous flatteries, we unprofitably permitted them to remain in the same sins or allowed them to increase the sins themselves, not remembering what is written in the Old Testament: that when one person sinned, God's wrath raged against all.

C. XXX. It is difficult to return to one's former grade after a lapse.

Likewise Jerome. Whoever does not guard the dignity of the divine grade, let him be content to save his soul. For it is difficult to return to the former grade.

C. XXXI. One who has fallen, after penance, shall minister only at the altar.

Likewise Basil. One who has fallen while holding a grade, after penance, let him be content to baptize, give communion to the sick, and minister only at the altar.

C. XXXII. Concerning priests, deacons, and laypersons who offer incense to idols.

Likewise from the Council of Ancyra [c. 1 and following]. Concerning priests who sacrificed and afterward entered the contest again, if they struggled from faith and did not do this by arrangement, for show, so that they might be presented, it was resolved that they should indeed retain the honor of their proper seat, but that it is not permitted to them to offer, to deliver a discourse to the people, or to perform any priestly offices. §1. Likewise deacons who sacrificed but afterward again resisted ought indeed otherwise to have honor, but they ought to cease from every sacred ministry, so that they neither offer bread nor the cup nor make proclamation, unless perhaps some of the bishops, conscious of their labor, humility, and gentleness, should wish to grant or apply something more to them. The power concerning these matters, therefore, will rest with them. §2. But those who, while fleeing, were seized or betrayed by members of their households, or who, after their property was taken away, sustained torments, or who, having been thrust into custody, proclaimed themselves to be Christians, and who were bound to such a point that, seizing their hands, men violently dragged them and applied them to deadly sacrifices, so that they were compelled by necessity to consume some of the polluted food, while they confessed in all abasement, garb, and humility of life—these, as persons situated outside an offense, we decree are not to be prohibited from the grace of communion. §3. But if they have been prohibited by some persons because of greater caution or because of the ignorance of certain persons, let them be received immediately. §4. It is fitting that this likewise be observed concerning clerics and the other laypersons. §5. That question also was investigated, whether laypersons who fell into these straits of necessity can also be promoted to the order of clerical status. It was therefore resolved that these also, as persons who sinned in nothing, should be advanced to this office if their preceding life has approved them. §6. But concerning those who denied without necessity, without loss of property, without danger, or anything of this kind—which happened under the tyranny of Licinius—it was resolved by the synod that, although they are proved unworthy of humane treatment, benevolence should nevertheless be extended to them. GRATIAN. But that statement of Pope Hormisdas prohibits the idle and negligent, not those truly penitent, from being restored. §1. Jerome's statement, moreover, confesses that this is difficult, not impossible. §2. Basil, however, shows that the rigor of justice is to be observed toward delinquents, which others affirm is mercifully to be relaxed toward penitents. §3. The foregoing authorities can also be distinguished in another way. Those whose crimes are manifest before or after ordination are to be cast down from sacred orders; but those whose sins are hidden and have been purged by secret satisfaction according to the decree of a priest can remain in their own orders. Hence Pope Nicholas to Archbishop Charles and his suffragans:

C. XXXIII. One whose crime was manifest cannot be restored as a priest.

If priests have fallen into the snare of fornication and the act of the crime was manifest or demonstrated, they cannot possess the honor of the priesthood according to the authority of canonical institution. Likewise Archbishop Rabanus writes to Heribald:

C. XXXIV. Who are to be restored after a lapse, and who are not.

Concerning those, moreover, who hold sacred orders and profess themselves to have been contaminated by capital crimes before or after ordination, it has seemed to us that this should be

written. Among them, as it seems to me, this distinction ought to exist: those who have been publicly detected or caught in perjury, theft, fornication, and other crimes of this kind shall fall from their own grade according to the institutes of the sacred canons, because it is a scandal to the people of God to have such persons set over them as are established to be vicious beyond measure. Indeed, from this people disparage the sacrifice of God (just as they are read once to have done when the sons of Eli were sinning, and, becoming rebellious and contrary from this, they daily become worse through their depraved examples. But those who, through hidden confession before the angels of God, with the priest also present who is to enjoin penance upon them, confess the aforesaid sins secretly committed by themselves and lament that they have gravely offended—if they strive to purify themselves through fasts, alms, vigils, and sacred prayers, hope of pardon from God's mercy is to be promised to these even with their grade preserved. Part IV. GRATIAN. Concerning those who have fallen into heresy also, this is to be observed: before the sentence of a council no one is to communicate with them. Hence Pope Cyprian to Antonianus, among other things [Book IV, epistle 2]:

C. XXXV. Let one who communicates with the lapsed before restoration abstain from communion.

Concerning what should be established about the cause of the lapsed, however, I deferred, so that when quiet and tranquility had been given and divine indulgence permitted the bishops to come together as one, then, after counsel had been shared and weighed through the deliberation of all, I might establish what ought to be done. But if anyone before our counsel and before a sentence established by the counsel of all should rashly wish to communicate with the lapsed, let him abstain from communion. Part V. GRATIAN. But what is read above as established concerning homicides is to be understood when the opportunity of escaping is given and they are not enclosed by the necessity of a siege. Otherwise, when constrained by necessity they cannot escape, if they then commit homicide, after being purified through penance they will be restored both to office and to communion.

Hence in the Council of Lérida [c. 1] it is read:

C. XXXVI. Clerics placed under siege who shed blood from necessity shall, after two years' penance, be restored to office and communion.

Concerning those clerics who have been placed under siege through necessity, this has been established: those who minister at the altar and deliver the body and blood of Christ, or handle vessels appointed to sacred office, are to abstain from all human blood, even that of an enemy. But if they have fallen into this, let them be deprived of both office and communion of the Lord's body for two years, so that for two years they may expiate themselves by vigils, fasts, prayers, and alms according to the strength that the Lord has given; and only then shall they be restored to office or communion, yet with the provision that they not thereafter be promoted to more powerful offices. But if during the defined time they have been more negligent concerning their salvation, let the power to prolong the time of that penance remain with the priest. GRATIAN. If a cleric has committed homicide by accident, moreover, by dispensation he is permitted to remain in his own grade. Hence Urban II writes to Warner, Bishop of Merseburg:

C. XXXVII. One who commits homicide by accident shall by dispensation remain in his order.

A boy is said to have been killed when a cleric threw a stone. For love of you we permit him to remain in his order, provided that he always remain in penance and fear.

C. XXXVIII. Concerning the same.

Likewise Stephen V to Sichibert, Bishop of Corsica. Because you judge yourself, as it were, liable in that, having been captured by the Saracens, you seem to have killed men, you do well. But since you are known not to have done it of your own accord, you are by no means judged canonically on that account. GRATIAN. But if, moved by anger, a priest has killed someone, even if he did not have the intention of killing, he will nevertheless be perpetually deposed. Hence Pope Nicholas writes to Osbald, the Quadrantine chorepiscopus:

C. XXXIX. A priest who, moved by anger, has killed someone, although without intention, shall perpetually lack office.

Let your Holiness endeavor to persuade your bishop to associate with himself the canonical number of colleagues—that is, six brothers and fellow bishops from neighboring provinces. When they are joined with you and deciding, take care diligently to investigate and scrutinize with every exertion, so that you may be able to discover whether that deacon, as is reported, died from the blow of the priest already named or from the breaking of his neck. And if indeed he was not struck to death by the aforesaid priest, but died after falling from a horse and breaking his neck, according to your judgment enjoin suitable penance upon the priest for having acted incautiously by striking him, and let him be suspended for some time from the solemnities of Mass, thereafter to return again to priestly office. But if that deacon truly died from any blow whatsoever by the priest, we decree that he minister in no way according to the custom of a priest, because, even if he did not have the will to kill, nevertheless the fury and indignation from which that deadly movement issued are in every person, and especially in God's ministers, prohibited and condemned in many ways. But if perhaps the priest should manifestly prove liable through your inquiry, we command that such a benefice from his church be granted to him that both he and his household may be able to have sufficient aid for their sustenance.

[PALEA.

C. XL. Concerning the same.

Likewise from the Council of Mâcon, c. 6. One who, with premeditated hatred or because of cupidity, has killed a Jew or a pagan, because he destroys the image of God and the hope of future conversion, shall do penance for forty days on bread and water.]

[PALEA.

C. XLI. Concerning the same.

If anyone has committed homicide, if he is a bishop, let him do penance for fifteen years and be deposed; let him also finish all the days of his life in pilgrimage. Let a priest do penance for twelve years, three of them on bread and water, and be deposed by sentence of his superior. Let a deacon do penance for ten years, three of them on bread and water. Let a cleric or layman do penance for seven

years, three of them on bread and water, and let him not presume to approach any grade of the priesthood.]

C. XLII. Those who commit homicide by accident shall abstain from communion for five years.

Likewise from the Council of Neocaesarea. As for those who committed homicide not by will but by accident, the former rule indeed joined them to communion only after seven years' penance according to the established grades; but this humane determination allots a period of five years.

C. XLIII. For what periods one who has killed her maidservant by will or accident shall abstain from communion.

Likewise from the Council of Elvira [c. 4]. If a woman, inflamed by the fury of jealousy, has beaten her maidservant with whips so that within the third day she emits her soul with torment, because it is uncertain whether she killed her by will or accident, it was resolved that, after lawful penance has been performed, she be admitted to communion after seven years if by will, and after a period of five years if by accident. But if she becomes ill within the established periods, let her receive communion.

C. XLIV. Concerning those who commit homicide deliberately or by accident.

Likewise from the Council of Pope Martin. If anyone has committed homicide voluntarily, let him always lie at the door of the catholic church and receive communion at the departure of his life. But if he committed any homicide not by will but by accident, the earlier canon ordered him to perform penance for seven years; the second canon commanded five.

[C. XLV.] Likewise in the Digest, title *Concerning Thefts* [law *He Who a Sack*].

One who stole a sack containing money is liable for theft also in the name of the sack, although he did not have the intention of stealing the sack. Conversely, that intention, not the deed, is punished is gathered in Book IX of the Code, title *On the Cornelian Law Concerning Assassins* [law 5], by the example of sacred letters of Diocletian and Maximian:

C. XLVI.

The one who asserts that he committed homicide not by will but by a fortuitous accident, since an occasion of death appears to have been furnished by the blow of a heel—if this is so and there can be no doubt concerning it—we wish, according to what is contained in our annotation, to be freed from every fear and suspicion that he sustains from the peril of the deed committed.

[PALEA.

C. XLVII. Likewise Emperor Antoninus [Code, *On the Cornelian Law Concerning Assassins*, law 1].

Your brother will do more rightly if he presents himself to the governor of the province, who, if he proves that the man was struck by him without the intention of killing, will pronounce sentence according to military discipline after the penalty for homicide has been remitted. For a crime is contracted if a will to harm also intervenes. But things that happen from an unforeseen accident rather than fraud are generally imputed to fate, not to guilt.]

Hence Pope Pelagius also:

C. XLVIII. Concerning the same.

Insofar as this Placidus says, last year it was said concerning his wife that she was suddenly found among the horses and, while the horses were being driven, she was struck and suffered a miscarriage. If this is so, perhaps if he took another's horses, he is culpable on that account. For concerning the woman who was crushed by accident among the horses, where his will is not known to have been pernicious, he cannot and ought not to be condemned according to the laws.

C. XLIX. Concerning the same.

Likewise Pope Nicholas. Those who appear to be cutting down a tree, if it should happen that the falling tree kills a person, are blameless and innocent, because the homicide was perpetrated neither by their will nor their desire. But if the death of the person who died is known to have occurred through some fault or neglect of theirs, they are to be cast from their grade and by no means received into sacred order.

C. L. Concerning the same.

Likewise from the Council of Worms. It often happens that, while someone intent upon necessary work cuts down a tree, someone coming beneath it is crushed. And therefore, if it was done by the will or negligence of the one cutting the tree, he ought altogether to be subjected to the penance of a homicide. But if it happened not by his will, not by his lack of care, and finally not with his knowledge, but while he perhaps applied himself to necessary work, the other unexpectedly came beneath the tree and was crushed under it, the cutter of the tree is not held as a homicide.

C. LI. Concerning the same.

Likewise from the Council of Tribur [c. 36, but there more fully]. If two brothers have felled trees in a forest and, as one tree was about to fall, brother said to brother, "Beware," and he, fleeing, ran into the pressure of the tree and died, let the surviving brother be judged innocent of his brother's blood. GRATIAN. By the foregoing authorities it is permitted to those who have fallen that after penance they may be restored in their own orders; but that they should ascend to a higher order after a lapse is permitted to them by no authority—indeed, it is altogether prohibited. Hence in the Council of Lérida [c. 5] it is read:

C. LII. Those who have fallen can be restored in their own orders, but cannot ascend to higher ones.

Those who serve the holy altar, if they suddenly fall through the lamentable frailty of the flesh and, with the Lord regarding them, worthily repent, so that with the body mortified they offer to God the sacrifice of a contrite heart, let it remain within the pontiff's power either not to suspend for long those who are truly afflicted, or to separate the idle from the body of the Church for a more extended time; yet in such a way that they receive again the places of their offices, but cannot thereafter be promoted to higher offices. [PALEA. §1. But if a second time, like dogs, they return to their vomit and, like swine, lie in wallows of mud, let them not only lack the dignity of office, but also not receive holy communion except at their departure.] GRATIAN. But by the example of blessed Peter—who, after he washed away the stains of his threefold denial by a confession of love, not only remained in

the grade of his apostolate but even merited to be instituted by Christ as pastor of the whole Church —it is proved that after worthy penance those who have fallen not only retain their own offices but can also ascend to higher ones. That blessed Peter was instituted by the Lord as pastor of the Church after the denial is proved by the authority of blessed Gregory, who writes in a homily on the Lord's resurrection concerning that same prince of the apostles, saying:

C. LIII. Peter, after the fault of denial, was instituted by the Lord as prince of the apostles.

We must consider why almighty God permitted the one whom he had resolved to set over the whole Church to fear the voice of a maidservant and deny him. We know that this was assuredly done by a dispensation of great piety, so that one who was to be pastor of the Church might learn in his own fault how he ought to have mercy on others. Therefore he first showed him to himself, and then set him over the others, so that from his own weakness he might know how mercifully he should tolerate the weaknesses of others.

C. LIV. After his denial Peter advanced in faith and grade.

Likewise Ambrose in homily L. Peter was made more faithful after he wept that he had lost his faith; and therefore he found greater grace than he lost. For, as a good shepherd, he received the flock to be guarded, so that he who previously had been weak for himself might become a support for all, and he who had wavered under the temptation of questioning might establish others by stability of faith. Finally, because of the solidity of his devotion he is called the rock of the churches, just as the Lord says: "You are Peter," and the rest. For he is called rock because he first laid the foundations of faith among the nations and, like an immovable rock, holds together the structure and mass of the whole Christian work. Part VI. GRATIAN. It is likewise objected that penitents ought not to be promoted to sacred orders; therefore, after penance, those who have fallen cannot attain higher ones.

Hence in the Fourth Council of Carthage [cc. 68 and 69] it is read:

C. LV. A cleric shall not be ordained from among penitents.

One from among penitents, although he is good, shall nevertheless not be ordained a cleric. If it has been done through the ignorance of the bishop, let him be deposed from the clergy, because at the time of ordination he did not disclose that he had been a penitent. But if the bishop knowingly ordained such a person, let him too be deprived only of the power of ordaining in his episcopate. A bishop shall be subject to a similar sentence if he knowingly ordained a cleric who had a widow, or a wife repudiated by another, or a second wife.

C. LVI. A bigamist, a penitent, or the husband of a widow who has intruded himself into sacred service shall remain in his order without hope of promotion.

Likewise Pope Siricius to Bishop Himerius [epistle I, c. 15]. Whoever, being a penitent, a bigamist, or the husband of a widow, has improperly and incompetently slipped into sacred service, let him understand that pardon has been relaxed to him by us on this condition: that he ought to count it as a great benefit if, with every hope of promotion taken from him, he remains with perpetual stability in the order in which he is found.

C. LVII. One who, oppressed by illness, received the blessing of penance through communion shall not be prohibited from the clergy.

Likewise from the Council of Girona [c. 9]. One who, oppressed by the weakness of sickness, received through communion the blessing of penance that we call viaticum and, recovering afterward, did not publicly submit his head to penance in the church, shall be admitted to the clergy if he is not held liable to prohibited vices.

C. LVIII. One who is enclosed in a monastery to perform penance shall not be ordained a priest.

Likewise Pope Hormisdas to all the Bishops throughout the provinces. If one who voluntarily seeks penance, although he performs it perfectly, cannot be ordained bishop or priest, so that even if he was ordained through ignorance and afterward is convicted of having received penance, he is cast down, by what conscience is one who is sent unwillingly into a monastery to perform penance—who surely is to be called nothing other than a penitent—permitted to attain the priesthood? Let no one set before me any other enactments whatsoever against the authority of the Apostolic See, of the 318 bishops, or of the remaining canons, because I do not doubt that it is not only rash but also dangerous to receive whatever has been said against their determination, in which we believe the Holy Spirit spoke.

C. LIX. Bigamists or any persons after penance shall not be assigned to sacred ministries.

Likewise Gelasius, Bishop of the City of Rome, to all the Bishops [throughout Lucania, etc., c. 5]. Let no pontiff trust that it is lawful to assign to divine ministries, as destined to serve in them, bigamists, those taking spouses left by others, any persons after penance, persons without letters, persons impaired in body, persons of dependent condition, persons entangled in the bonds of the curia and public affairs, or persons examined indiscriminately with no observance of a fitting interval of time.

C. LX. Penitents cannot even become clerics.

Likewise Innocent [to Agapitus and the others, epistle VI]. The canons established at Nicaea exclude penitents even from the lowest offices of clerics. GRATIAN. This is understood not concerning any penitents whatsoever, but only those who after penance receive the belt of secular military service. Concerning them Bishop Innocent writes to Victorius, Bishop of Rouen [epistle II, c. 2]:

C. LXI. One who held the belt of military service after the remission of sins ought not to become a cleric.

If anyone after the remission of sins held the belt of secular military service, he ought altogether not to be admitted to clerical status. GRATIAN. It can also be understood in another way. There is a certain penance called solemn, which is granted only once in the Church, concerning which Ambrose says: "Just as there is one baptism, so there is one penance." Likewise: "There is no second place of penance." Likewise: "Very many are found who think that penance is to be performed repeatedly, who luxuriate in Christ. For if they truly performed penance, they would never afterward think it was to be repeated."

[C. LXII.]

Likewise Augustine to Macedonius [epistle LIV]. Although it was cautiously and salubriously provided that the place of most humble penance be granted only once in the Church, lest a medicine exceedingly useful be held less valuable, nevertheless pardon through penance is never denied to those who sin daily.

GRATIAN. How this penance is to be imposed, moreover, is read in the Council of Agde, in which it was established as follows [c. 15]:

C. LXIII. How penitents are to approach penance.

At the time when penitents seek penance, let them receive from the priest the imposition of hands and haircloth upon their heads, just as has been established everywhere. But if they have not cut off their hair or changed their clothing, let them be cast out and, unless they worthily repent, not received. Penance is also not easily to be assigned to young persons because of the frailty of their age. Nevertheless, viaticum is not to be denied to anyone placed at the point of death.

C. LXIV. What things are to be observed in solemn penance.

Likewise from the same. At the beginning of Lent, all penitents who undertake or have undertaken public penance shall present themselves before the doors of the church to the bishop of the city, clothed in sackcloth, barefoot, with faces cast down to the ground, professing by their very bearing and countenance that they are guilty. The deans—that is, the archpriests of the parishes—and the priests of the penitents, who ought diligently to inspect their conduct and enjoin penance according to the measure of the fault through the aforesaid grades, ought to be present there. After this, let him lead them into the church and, prostrate on the ground with the whole clergy, chant with tears the seven penitential psalms for their absolution. Then, rising from prayer, according as the canons command, let him impose hands upon them, sprinkle blessed water over them, first cast ashes, and then cover their heads with haircloth; and with groaning and frequent sighs let him announce to them that, just as Adam was cast out of paradise, so they too are cast out of the Church for their sins. Afterward let him command the ministers to expel them outside the door of the church, while the clergy follow them with the responsory, "In the sweat of your face you shall eat your bread," etc., so that, seeing holy Church terrified and moved because of their crimes, they may not make little of penance. On the sacred Supper of the Lord, however, let them again be presented at the thresholds of the church by their deans and their priests. GRATIAN. No cleric is ever permitted to perform this penance, and therefore penitents of this kind are prohibited from being admitted to the clergy.

Hence in the Fifth Council of Carthage [c. 11] it is read to have been established:

C. LXV. Hands shall not be imposed upon clerics as upon penitents.

It is to be confirmed that, if priests or deacons are at any time convicted of some graver fault for which it is necessary that they be removed from ministry, hands shall not be imposed upon them as upon penitents or as upon faithful laypersons; nor is it ever to be permitted that those rebaptized be promoted to the grade of clerical status. Likewise Pope Siricius [to Himerius, epistle I, c. 14]:

C. LXVI. Neither is a cleric permitted to perform penance, nor a penitent to approach clerical status.

It was also right for us to provide that, just as no cleric is ever permitted to perform penance, so after penance and reconciliation no layperson is permitted to obtain the honor of clerical status, because although they have been cleansed from the contagion of all sins, those who formerly were vessels of vices ought nevertheless to receive no instruments for carrying out the sacraments.

C. LXVII. Hands ought not to be imposed upon priests and deacons as upon penitents.

Likewise Pope Leo [to Rusticus of Narbonne, epistle XC, c. 2]. It is alien to ecclesiastical custom that those who have been consecrated in the honor of the priesthood or the grade of the diaconate should receive, for some crime of their own, the remedy of performing penance through the imposition of hands. This descends without doubt from apostolic tradition, according to what is written: "If a priest sins, who will pray for him?" Hence those who have fallen in this manner, in order to merit the mercy of God, must seek private seclusion, where, if their satisfaction has been worthy, it may also be fruitful for them. GRATIAN. By the authority of the Council of Toledo also it is proved that penitents of this kind are not to be admitted to the clergy, in which [c. 2] it was established thus:

C. LXVIII. Because of necessity penitents may be admitted to the clergy.

It was resolved that penitents not be admitted to the clergy, except only if necessity or use should require it; then let them be assigned among the doorkeepers or among the readers, yet so that they do not read the Apostle or the Gospel. §1. But if any have been ordained as deacons, let them be held among the subdeacons, so that they neither impose a hand nor touch sacred things. §2. When, however, we say "penitent," we mean one who after baptism, whether for homicide or for diverse crimes and most grave sins, performed public penance and, under haircloth, was reconciled to the divine altar. Part VII. GRATIAN. Apostates also ought not to be admitted to the office of clerical status. Hence in the Second Council of Arles [c. 25]:

C. LXIX. Apostates shall not be admitted to the office of clerical status.

Those who apostatize after the holy profession of religion and return to the world, and afterward do not seek the remedies of penance, shall receive no communion at all without penance. We also command that they not be admitted to the office of clerical status. And whoever he may be, after penance let him not presume to take the secular habit. But if he has presumed to do so, let him be held as alien from the Church.

Distinction LI

GRATIAN. Part I. Behold, criminals, those not truly penitent, or those performing public penance are prohibited from sacred orders. Holy mother Church also added that curiales, those serving as soldiers after baptism, or those contending in the forum should be prohibited from sacred orders. Hence Innocent says [Pope to the Bishops assembled in the Synod of Toledo, epistle XXIV, c. 2]:

C. I. Those serving as soldiers after baptism or contending in the forum are prohibited from sacred orders.

We have learned that a number of those who, after receiving the grace of baptism, were engaged in forensic practice and undertook the obstinacy of prevailing have been enrolled into the priesthood; some of their number are said to have been taken up into the priesthood; some from military service, who obeyed powers and necessarily executed savage commands; some from among the curiales, who, while obeying powers, did the things commanded them; and some who celebrated the entertainments and public shows of the people attained the honor of the highest priesthood. Not one of all these ought even to have attained fellowship in the clerical order. If we command each of these matters to be investigated, we shall induce no small commotions or scandals upon the Spanish provinces, which we desire to heal through a zeal for correction; therefore we think these matters should rather be remitted. But lest similar things be committed thereafter, the maturity of your charity will have to provide that a necessary end now be imposed upon so great a usurpation, with this evidently established: whoever are ordained as such shall be deposed together with their ordainers.

C. II. From what classes of laypersons men cannot attain clerical status.

The same to Felix, Bishop of Nocera [epistle IV, c. 3]. The classes of laypersons from which some cannot attain clerical status have been designated: that is, if any faithful person has held an administration. The reason concerning curiales, moreover, is manifest, because even if men of this kind are found who ought to become clerics, nevertheless, since they are rather often reclaimed for the curia, caution is to be exercised concerning them because of the tribulation that often comes to the Church from them.

C. III. Curiales shall not be admitted to clerical office.

The same [to Victricius, Bishop of Rouen, epistle II, c. 11]. Moreover, certain of our brethren frequently strive to make clerics of curiales or those occupied in any public functions; concerning them there is afterward greater sadness when something is commanded by the emperor about recalling them than grace arises from the person enrolled. For it is established that in those very duties they also furnish entertainments, which there is no doubt were invented by the devil, and either preside over or perhaps take part in the preparations for games and shows. Let the solicitude and sadness of the brethren that we have often endured in the emperor's presence certainly be an example, when we petitioned him rather often on their behalf, as you yourself knew while placed with us. Concerning them, an immense trouble insisted that not only the lower clerics from among the curiales, but even those already established in the priesthood, be returned.

C. IV. One who after baptism was girded for killing the faithful shall not be promoted to the diaconate.

Likewise from the First Council of Toledo [c. 8]. If anyone after receiving baptism served as a soldier and took up the military cloak and belt for killing the faithful, even if he did not commit grave acts, if he has been admitted to the clergy, let him not receive the dignity of the diaconate.

C. V. From what things one who is to be ordained as a bishop ought to be free.

Likewise from the Fourth Council of Toledo [c. 19]. Those who are held in any crime; those sprinkled with the mark of infamy; those who have confessed through public penance that they committed any crimes; those who have fallen into heresy; those who are known to have been baptized or rebaptized in heresy; those who have cut themselves, or those who are known to lack some part of their members through a natural defect; those who have entered a union with a second wife or frequented numerous marriages; those who married a widow or one left by her husband, or who were husbands of women who had been corrupted; those who had concubines or prostitutes; those who are liable to a servile condition; those who are unknown; those who are neophytes or laymen; those devoted to secular military service; those bound by the obligations of the curia; those unskilled in letters; those who have not yet reached thirty years; those who have not ascended through the ecclesiastical grades; those who seek honor through canvassing; those who endeavor to obtain honor by gifts; those who are chosen for the priesthood by their predecessors. §1. Nor thereafter shall he be a priest whom neither the clergy nor the people of his own city elected, or whose election neither the authority of the metropolitan nor the assent of the comprovincial priests ratified. Therefore, whoever is thereafter proposed for the order of the priesthood, investigated concerning the things aforesaid, found in none of them, and upon examination shown to possess an approved life and doctrine, shall then, according to synodal or decretal enactments, be consecrated priest on the Lord's day by all the comprovincial bishops, or certainly by three, with the will of all the clerics or citizens, the others who are absent concurring by their letters, and especially with the authority or presence of the one established as metropolitan bishop. A comprovincial bishop, moreover, is to be consecrated where the metropolitan chooses; but a metropolitan only in the metropolitan city, with the comprovincials assembling there. §2. But if anyone thereafter, contrary to the aforesaid prohibitions of the canons, strives unworthily to aspire to the grade of the priesthood, he, together with his ordainers, shall be subject to the peril of the honor obtained.

Distinction LII

GRATIAN. But one who, having passed over some grades, has ascended to higher ones not from pride but from negligence shall abstain from the higher ones until at the fitting time he receives those passed over. Hence Alexander II writes to Grimaldus, Bishop of Constance:

C. I. Concerning one who, the order of the subdiaconate having been passed over, was ordained deacon and priest.

The solicitude of your charity took care to consult whether the bearer of these letters is fit to perform the office of the diaconate and priesthood or not, since he is known to have ascended to it in an excessively hasty course, with the order of the subdiaconate passed over, from negligence rather than pride. Hence, taking counsel for your charity, we command you to prohibit him from priestly office until at the next Ember fast you duly impose upon him the ministry of the subdiaconate, and thereafter permit him to return to the higher offices.

Distinction LIII

GRATIAN. Curiales, moreover, as was written above, are prohibited from being ordained because frequently, when they are reclaimed from the Church, very many disadvantages follow for the Church, or because those same curiales transfer themselves to churches not from a vow of religion but so that they may escape the accountings of their offices. Hence Gregory, in Book VIII of the Register [Indiction I, epistle 11], writes to all the Bishops concerning the law of Emperor Maurice:

C. I. Why it was established that curiales should not be ordained.

I have taken care to transmit to your fraternity the law that the most pious emperor issued, lest perhaps those who are bound to military service or public accounts, while fleeing the peril of their causes, should come to the ecclesiastical habit or be converted in monasteries, especially for this reason: those who are entangled in the affairs of the world are not to be received precipitously among the clergy of the Church, because while they live in the ecclesiastical habit no differently than they had lived before, they by no means strive to flee the world, but to change it. But if any such persons also seek a monastery, they are by no means to be received unless first released from public business. §1. But if any from among military men hasten to be numbered in monasteries, they are not to be received rashly unless their life has been subtly investigated. And when they have been tested for three years in their own habit according to the norm of the rule, then, with God as author, let them receive the monastic habit.

Distinction LIV

GRATIAN. Part I. Slaves, moreover, are prohibited from being ordained unless they obtain lawful freedom from their own masters. Hence Bishop Leo writes to all the Bishops:

C. I. A slave shall not be promoted to clerical office.

Let no bishop presume to promote another's slave to clerical office unless perhaps the petition or will of those who claim some power over him has been added. For one who is to be enrolled in the divine military service ought to be free from others, so that he is not drawn away by the bonds of any necessity from the Lord's camp in which his name is inscribed.

C. II. No one of servile condition shall approach sacred orders.

Likewise from the Council of Tribur. Let none of servile condition be promoted to sacred orders unless first they obtain lawful freedom from their own masters; let the charter of that freedom be read publicly from the ambo before ordination, and, if no one contradicts, they shall be duly consecrated. Moreover, a slave not canonically consecrated, after he has fallen from his grade, shall be of the condition that he had been before the grade.

[PALEA.

C. III. From the First Council of Carthage, c. 8.

Magnus, the Astiagensian bishop, said: What seems good to your charity? Ought procurators, agents and executors, or guardians of wards, to be ordained? Bishop Gratus said: If, after everything has been laid down and their accounts rendered, the deeds of their life have been approved in all things,

they ought, if requested and with the praise of the clergy, to be rewarded with honor. For if before freedom from their business or offices they have been ordained by someone without consideration, the Church is defamed. All said: Your Holiness has rightly established all things, and therefore this also is our sentence.]

C. IV. After the gift of freedom, servants of the Church may be called into the clergy.

Likewise from the Ninth Council of Toledo [c. 11]. Those from among the servants of the Church who are called by their bishops to serve in the clergy must receive the gift of freedom; and if they shine by the merits of an honorable life, then at length, aided by these, let them perform higher offices. But let the perpetual servitude of their condition bind in a chain those whom the incorrigible guilt of a crime has defiled. GRATIAN. Those who obtain freedom from their masters so that they may be ordained ought, moreover, to be altogether alien from their patronage, so that they are found liable to their services in no respect. Hence in the Fourth Council of Toledo [c. 73] it is read:

C. V. Those who receive freedom from their masters with no service retained shall be received into clerical status.

Whoever receive freedom from their masters in such a way that the patron retains no service for himself from them—these, if they are without crime, shall be received as free persons into the clerical order, because they are known to have been released by direct manumission. But those who were manumitted with service retained, because they are still held liable by service to the patron, are by no means to be promoted to ecclesiastical order, lest, whenever their masters wish it, they be made slaves from clerics.

[PALEA.

C. VI. From the Council of Toledo [c. 82].

Concerning the ordination of slaves who are indiscriminately promoted to ecclesiastical grades, it was resolved by all that agreement with the sacred canons ought to be maintained, and it was established that henceforth no bishop presume to promote them to sacred orders unless they first obtain freedom from their own masters. §1. And if any slave, fleeing his master, attains ecclesiastical grades either through letters, through witnesses hired or corrupted by a gift, or through any cunning or fraud, it is decreed that he be deposed and his master receive him. §2. But if a grandfather or father, migrating from one country to another, begets a son in that province, and the son himself was raised there and promoted to ecclesiastical grades, and it is unknown whether he is a slave, and afterward his master comes and acquires him according to the laws, it is sanctioned that, if his master wishes to give him freedom, he shall remain in his grade. §3. But if he wishes to draw him away from the Lord's camp by the chain of servitude, let him lose his grade, because, according to the sacred canons, while remaining a person of low condition he cannot exercise the dignity of the priesthood.]

C. VII. One who is bound by the patronage of anyone shall not be ordained without the patron's consent.

Likewise from the Council of Pope Martin. If anyone is bound by servile tribute, by any condition, or by the patronage of any household, he is not to be ordained a cleric unless he has been of approved life and the patron's consent has been added. [PALEA.

C. VIII. From the Council of Toledo, c. 2.

Concerning the property or *peculium* of those who are given freedom by their own masters so that they may lawfully be promoted to ecclesiastical grades, it was established that whatever they possessed before freedom shall rest within the masters' power, whether they wish to grant it to them or retain it for themselves.] GRATIAN. Otherwise, if they have not obtained freedom from their masters and have in any way slipped into ecclesiastical orders, a priest shall be punished by the loss of his *peculium*, while a deacon shall either furnish a substitute for himself or be recalled into servitude; the other grades cannot free anyone from the bond of servitude.

Hence Gelasius writes to Bishops Martinus and Justus:

C. IX. If a slave has secretly slipped into the priesthood, let him be punished by loss of his *peculium*.

It has been comprehended from the ancient rules and the recent synodal explanation that dependent persons are not to be girded with the belt of heavenly military service. But I do not know whether you are carried away by ignorance or willfulness, so that scarcely any of the bishops seems exempt from this cause. For the frequent complaint of very many resounds around us in such a way that it is thought that nothing at all has been established in this respect. §1. Indeed, the agents of our son, the illustrious man Amandianus, complain gravely that some men owing service to his jurisdiction have now been ordained clerics and others deacons, although not only ought persons of this kind not to have been received after the recent council—which is established to have been perfected by the assembly of so many pontiffs under the assent of everyone's most salutary provision—but even if any perhaps had previously been received into the military service of divine worship through ignorance, they ought justly to have been expelled altogether, stripped of religious privilege, and compelled by admonition to return to the possessions of their masters. And therefore, dearest brothers, examine those whom the aforesaid man's agents show to be detained in clerical office and, when they have been proved liable, restore them without interruption while preserving the course of the laws, yet so that if any one of these is now found to be a priest, he shall remain in the same grade, punished only by the loss of his *peculium*. A deacon, however, shall either furnish a substitute or, if he has none, shall himself be returned. But let those in the remaining offices know that no one, if convicted, can be vindicated from liability, so that, with this order preserved, neither the rights of masters nor privileges are disturbed in any way.

C. X. A slave made a cleric shall remain liable to servitude.

The same to Bishops Herculentius, Stephanus, and Justus. A frequent and continual complaint indeed resounds around us concerning those pontiffs who, considering neither the ancient rules nor our decrees recently directed, do not reject persons bound and tied to landholders when they come to the clerical belt. §1. For recently the stewards of the illustrious woman Placidia complained by the presentation of a petition that Sabinus, bishop of the city of Marcelliana or Casilinum, taking advantage of the absence of the mistress, advanced Antiochus, a slave under the jurisdiction of their patroness, even to the honor of the priesthood and adorned his brother Leontius with the privilege of clerical office. And therefore, dearest brothers, by our authority we assign to you the adjudication between the aforesaid stewards and those who are reclaimed on the allegation of the lowest condition, so that, after all the truth has been investigated, if he truly cannot wash away the stain

alleged against him by the reason of a just rebuttal, you shall in every way return the cleric Leontius, whom the grade determined by the laws does not protect, to following the necessity of his condition. Antiochus, however, because he can no longer be taken back on account of the priesthood, if his mistress desires to station him in her church in the honor in which he is, let her possess him not as though returned to her, but as received for the celebration of the ministries.

C. XI. Concerning the same.

The same to Bishops Rufinus and Aprilis. Who would say that either the laws of princes, the rules of the fathers, or recent admonitions ought to be despised, except one who thinks that only an offense committed by himself passes unpunished? Indeed, the agents of our daughter, the illustrious and magnificent woman Maxima, complained to us by the presentation of a petition that Silvester and Candidus, persons belonging by origin to her, were illegitimately ordained deacons by the bishop of Luceria contrary to the constitutions mentioned above, even after an objection had first been made. And therefore, dearest brothers, know that the excess of so great a transgression is to be investigated more sagaciously, and if it is established that the complaint is supported by truth, let those who were illegitimately created after an objection had first been made be immediately repelled from sacred offices.

C. XII. Without their masters' consent, slaves shall be admitted neither to the profession of religious life nor to clerical office.

Likewise to the same. The presumption involved in a general complaint is also to be avoided, by which nearly all complain that slaves and bound tenants indiscriminately flee the rights and possession of their masters and, under the pretext of religious conversion, either betake themselves to monasteries or, with prelates also conniving, are indiscriminately admitted to ecclesiastical service. This destruction is to be removed in every way, lest through the institution of the Christian name either another's property seem to be invaded or public discipline overturned; especially since it is not fitting that the dignity of clerical ministry itself be stained by this obligation and compelled to litigate concerning the status and condition of those serving in its ranks, or seem—God forbid—to be itself liable. When these matters have been competently prohibited by a solicitous interdiction, let any bishop, priest, deacon, or any of those who are known to preside over monasteries who think that persons of this kind whom they retain are not to be restored to their patrons, or that they are thereafter to be assigned either to the service of the Church or to religious congregations, have no doubt that they will undergo peril to their own honor and communion if a truthful complaint from anyone reaches us concerning this matter, unless perhaps the persons were first released by the will of their masters, attested by subscription, or granted by a lawful transaction. §1. For with great efforts, according to the blessed Apostle Paul, care must be taken lest the faith and discipline of the Lord be blasphemed. The same: §2. We believe that nothing is lost to ecclesiastical interests if things belonging to others are returned. Part II. GRATIAN. This is to be observed when the master and his slave are found to be of the same profession. Otherwise, if a Jew has bought a Christian slave, even against the Jew's will the slave ought to be brought to freedom by the authority of a judge or bishop. Hence Gregory to Bishop Libertinus:

C. XIII. Christian slaves purchased by Jews shall be brought to freedom.

Whatever Christian slaves a Jew is shown to have purchased, bring them to freedom without hesitation according to the precepts of the laws, lest—God forbid—the Christian religion be polluted by being subjected to Jews.

C. XIV. Public offices are not to be entrusted to Jews.

Likewise from the Third Council of Toledo [c. 14]. Let no public offices be imposed upon Jews through which an occasion is given to them to inflict punishment upon Christians. But if any Christians have been stained by them in the rite of Judaism or even circumcised, let them return to freedom and the Christian religion without repayment of the price. GRATIAN. Concerning those, however, who, bought in unbelief, desire to come to the grace of baptism, Gregory writes to Fortunatus, Bishop of Naples, what ought to be done [Book V, epistle 31]:

C. XV. Slaves who come from unbelief to the faith shall be vindicated into freedom.

Your fraternity ought to be solicitous that, if not only a Jew but also any pagan in servitude to Jews wishes to become a Christian, after his will has been disclosed, there be no power under any device or argument to sell him to any Jew; rather, let the one who desires to be converted to the Christian faith be vindicated into freedom in every way by your defense. §1. But lest those who must lose slaves of this kind perhaps think that their interests are unreasonably impeded, it is fitting that you observe this with solicitous consideration: if pagans whom they bought from foreign lands for the sake of trade should happen within three months—while a buyer to whom they might be sold is not found—to flee to a church and say that they wish to become Christians, or even disclose such a will outside the church, let their owners receive their price, evidently from a Christian buyer. But if after the appointed three months any of these Jewish slaves declares his will and wishes to become a Christian, and no one has afterward bought him, let his master not dare to sell him under the appearance of any occasion; rather, let him undoubtedly be brought to the rewards of freedom, because the master is said to have bought him not for selling but for serving himself.

[PALEA.

C. XVI. The same to Januarius, Bishop of Cagliari, Book III,

epistle 9. If any slave of the Jews has fled to venerable places for the sake of faith, permit him by no means to sustain prejudice; rather, whether he was formerly a Christian or has now been baptized, let him be defended into freedom in every way under the religious patronage of ecclesiastical piety, without any loss to poor Christians.]

[PALEA.

C. XVII. Likewise from the Twelfth Council of Toledo, c. 9.

And if the slaves of Jews, although not yet converted, flee to the grace of Christ, let them be given freedom.]

[PALEA.

C. XVIII. Likewise from the First Council of Mâcon, c. 16.

With God as author, we sanction in the present council that henceforth no Christian slave serve a Jew; rather, upon payment of twelve solidi for any good slave, any Christian shall have license to redeem that slave either into freeborn status or into service. And if he desires to become a Christian and is not permitted, let him act similarly, because it is wicked to hold in bonds under one who blasphemes the Christian religion a person whom Christ the Lord redeemed by the shedding of his blood. But if any Jew is unwilling to acquiesce in the things we have established, as long as he delays coming for the established money, let the slave himself be permitted to dwell with Christians wherever he wishes.]

C. XIX. Concerning the same.

Likewise from the First Council of Orléans [c. 5]. Part III. If a slave, while his master is absent or ignorant, has been ordained priest or deacon by a bishop who knew that he was a slave, with the slave remaining in clerical office, let the bishop recompense his master with double satisfaction for him. But if the bishop did not know that he was a slave, those who furnished testimony or petitioned that he be ordained shall be held liable to a similar repayment.

C. XX.

A new constitution. If a slave has been ordained among the clergy with his master's knowledge and without his objection, by this very fact he will be free and freeborn. But if without the master's knowledge, it is permitted to him within the span of one year both to prove the servile condition and to receive his slave. Yet even if, after being tested in a lawful trial, he becomes a monk, he escapes the yoke of servitude. For they ought to remain in the monastery for three years before becoming monks; but afterward, if they have become monks, they are made free. The episcopal order frees from servile or adscripta condition, but not from curial or official condition, for that endures even after ordination. Episcopal dignity also dissolves the right of paternal power. We permit registered tenants on the estates themselves to become clerics even without the will of their masters, yet so that, after becoming clerics, they fulfill the agriculture imposed upon them.

C. XXI. Concerning the same.

Likewise Leo to all the Bishops [epistle I, c. 1]. Persons are indiscriminately admitted to sacred order whom no dignity of birth and no dignity of morals supports; and those who were by no means able to obtain freedom from their masters are advanced to the summit of the priesthood, as though servile lowliness might take this honor. Therefore, dearest brothers, let all the priests of your province abstain from these; and we wish them to refrain not only from these but also from other bound tenants or persons obligated to any condition, unless perhaps the petition or will of those who claim some power over them has been added. Part IV. GRATIAN. Concerning slaves of a monastery it is asked whether they can be joined to ecclesiastical offices or not. But servants of churches are not to be ordained, as was said above, unless they obtain freedom from their own bishops. Moreover, a slave of a monastery is unable to obtain freedom; therefore, it is not permitted him to approach clerical status. That he cannot be made free is proved by the authority of the Eighth Synod, in which it is read to have been established thus:

C. XXII. It is not permitted to an abbot or monk to make a monastery's slave free.

It shall not be permitted to an abbot or monk to make a monastery's slave free. For one who has nothing of his own cannot give freedom to another's property, since, as the secular laws also have sanctioned, a possession cannot be alienated except by its own master. GRATIAN. By this authority slaves are prohibited from obtaining freedom to withdraw from the service of a monastery, but they are not prohibited from obtaining freedom to be promoted to sacred orders. For one established in sacred orders can perpetually serve the services of the monastery, and thus a slave of a monastery is able both to obtain freedom and to be associated with sacred offices. Hence in another chapter of the aforesaid constitution this reason is given: "For it is unjust that, while monks perform rural work, their slaves should grow sluggish in idleness and abound in delights." Part V. GRATIAN. That the slaves of churches—by which name we understand slaves of a monastery also to be signified—ought to be assumed into the profession of sacred religion is proved by the authority of blessed Gregory, who, presiding in a general Synod, said:

C. XXIII. If a servant of the Church has been of approved conduct, he can be ordained.

We know that many from the household of the Church hasten to the service of the Almighty, so that, free from human servitude, they may be able to live in monasteries in divine service. If we permit this indiscriminately, we furnish to all an occasion for fleeing the dominion of ecclesiastical right. But if we incautiously retain those hastening to the service of the Almighty, we are found to deny certain things to him who gave all things. Hence it is necessary that, if anyone from servitude under ecclesiastical right or secular military service desires to be converted to God's service, he first be tested while established in the lay habit. And if his morals and conduct bear testimony to his good desire, let him be permitted without any reconsideration to serve the almighty Lord in a monastery, so that one who from divine love seeks to undergo a stricter servitude may depart free from human servitude. But if he has also lived blamelessly in the monastic habit according to the rules of the Fathers, after the times prescribed by the sacred canons let him now be advanced to any ecclesiastical office, provided nevertheless that he was not stained by those crimes which in the Old Testament are punished by death. GRATIAN. Behold how slaves may be assumed into clerical status, or how they are not admitted. Freedmen also are not to be promoted to the clergy unless they have been released from services to their patron. Hence in the Council of Elvira [c. 80]:

C. XXIV. Without the patron's consent a freedman shall not be promoted to the clergy.

It is to be prohibited that freedmen whose patrons are in the world be promoted to the clergy.

Distinction LV

GRATIAN. Part I. Those impaired in body are likewise prohibited from sacred offices. Hence Pope Gelasius writes [to the Bishops established throughout Lucania and Bruttium, epistle I, cc. 2 and 3], saying:

C. I. The prior life of one who comes from monastic disciplines to a clerical function, and of one from the laity, shall be examined.

Therefore, with the ancient institutes remaining in force because of the reverence due them—which, where no straitness of affairs or times presses, it is fitting to observe according to rule—since churches have been deprived of all or of sufficient ministries to such an extent that they are unable to supply divine services to the congregations belonging to them, we grant that, if anyone instructed in monastic disciplines approaches a clerical function, his prior life be investigated, even if he is from the laity: §1. that he not be infected by some crime, or illiterate, or a bigamist, or one who has taken a wife from adolescence, or impaired in body, or of servile or bound-tenant condition, or entangled in the obligations of the curia or of public affairs, or marked by public penance, or examined with no observance of a fitting interval of time.

C. II. One who ordains someone contrary to the form of the canons shall be subject to a year's suspension.

Likewise from the Fourth Council of Arles [c. 3]. Let no one dare to ordain a penitent, a bigamist, or a husband of widows in the aforesaid honors. And although the institutes of nearly all the canons already contain these things, nevertheless, lest the importunity or wicked suggestion of petitioners, as we have already said, steal upon any of the priests, it was necessary that the Lord's priests now will to impose a stricter rule upon themselves. And therefore, whoever from this day presumes to ordain a cleric contrary to the things comprehended above shall not presume to celebrate Masses for a whole year from the day when this can be proved against him. If anyone is unwilling to observe this matter and, acting contrary to the enactment, presumes to celebrate Masses, let him be deprived of the communion of the Church and know himself alien from the communion of all the brethren, because it is worthy that one who despises observing the things salubriously established by the holy Fathers should feel the severity of ecclesiastical discipline.

C. III. Penitents or those unskilled in letters shall not be ordained.

Likewise Pope Hilary [from the Roman Council held by him, c. 3]. Let penitents, those unskilled in letters, or those who have suffered some injuries to their members not dare to aspire to sacred orders. But whoever has been the consecrator of such persons shall himself undo his deed. GRATIAN. Those impaired in body, however, are understood as those cut not by accident but by their own will. Hence in the Canons of the Apostles [cc. 22 and 23] it is read:

C. IV. One who has cut himself shall not be ordained.

If anyone has cut himself—that is, if anyone has amputated his own genitals—let him not become a cleric, because he is his own murderer and an enemy of God's creation. §1. If anyone, when he was a cleric, has cut himself, let him be condemned altogether, because he is his own murderer.

C. V. Those who cut themselves shall not be brought forward to the clergy.

Likewise from the Second Council of Arles [c. 7]. Those who, not knowing how to resist carnal vice, cut themselves cannot attain the clergy. Likewise Innocent writes to Felix, Bishop of Nocera [epistle IV, c. 1]:

C. VI. One who intentionally cut off part of his finger is not to be ordained.

The canons do not admit to the clergy one who intentionally cut off part of any finger from himself. But those to whom it happened by some accident, while either applying care to rural work or doing something and striking themselves involuntarily, the canons command both to become clerics and, if they are found in the clergy, not to be cast out. For in the former the will that dared to apply the blade to itself is judged; but in the latter the accident merited pardon. GRATIAN. It is to be understood similarly concerning those who because of sickness are cut by physicians, are mutilated by barbarians, or are castrated by their masters. Hence in the Council of Nicaea [c. 1] it is read:

C. VII. One who is cut by physicians because of sickness can be admitted to the clergy.

If anyone was cut by physicians because of sickness or mutilated by barbarians, let him remain in the clergy. But if anyone, while healthy, cut himself, it will be fitting that one established in the clergy abstain, and that henceforth none of such persons ought to be promoted. Just as it is clear that this was said concerning those who deliberately seek this thing and dare to cut themselves, so the Church receives into the clergy those whom either barbarians or masters castrated, if they are found otherwise most worthy.

C. VIII. One who is made a eunuch through the plots of men may lawfully be ordained bishop.

Likewise from a Canon of the Apostles [c. 21]. If a eunuch was made so through the plots of men, or if his genitals were amputated in persecution, or if he was born thus, and he is worthy, let him become a bishop.

C. IX. Those who are cut by physicians, barbarians, or their masters are not excluded from the clergy.

Likewise from the Council of Pope Martin. If anyone because of illness had his natural parts cut by physicians, likewise those who were castrated by barbarians or their masters and are found worthy in morals, the canon admits these to be promoted to the clergy. But if anyone healthy thinks that carnal concupiscences can be cut away from himself not through the discipline of religion and abstinence but through the cutting of the body fashioned by God, and has therefore castrated himself, we decree that he not be admitted to any clerical office. But if he had already been promoted to the clergy before, let him be prohibited from his ministry and deposed.

C. X. One who is made lame by a physician's incision is not prohibited from sacred orders.

Likewise from the Council of Lérida. If any cleric placed in sickness is made lame by a physician's incision, we do not deny that he may be promoted to sacred orders.

C. XI. One who lost a finger by accident is not prohibited from the clergy.

Likewise Stephen to Robert, Bishop of Metz. The bearer of these presents, namely the cleric Flavinus, coming to the holy Apostolic See, brought us an epistle directed by you, in which you took care to report that, very recently captured by the Normans, he had a finger of his left hand cut off, and you

ask whether on this account he can be promoted to ecclesiastical order or not. And since we have found that your diligence, especially solicitous concerning this matter, demands to be instructed by the Apostolic See, we who desire always to follow the norm of justice deservedly praise the zeal of your Holiness, wishing your Reverence to know that, if it is so that the finger itself was cut off by the Normans, this will harm him nothing for being promoted, if he is otherwise worthy, because we do not believe it escapes your Charity what the sacred canons decree concerning those who involuntarily suffer such a thing from masters, physicians, or pagans.

C. XII. Dignity received in a time of soundness is not lost through subsequent disability.

Likewise Pope Gelasius to Bishop Palladius. Just as the precepts of the canons by which ecclesiastical discipline is governed do not permit those weak in body to come to the priesthood, so, if anyone was established in it in actuality and was then wounded, he cannot lose what he received in the time of his soundness. §1. Indeed the priest Stephen, in a petition offered to us that is contained below, lamented that the dignity of the priesthood was conferred upon him long ago and many years before, which he truly had received when his body was judged unblemished; but recently, because of the devastation of the province—which the uncertainty of minds and barbarians following diverse sects brought upon Tuscany above all—while he strove to escape threatening swords by the protection of flight, in leaping over fences that met him, he impaled the lower parts of his body upon sharp stakes, which scarcely could be healed after treatment had been applied for two years. And therefore, dearest brother, restore to the aforesaid man his place and dignity, so that he may exercise the sacrosanct mysteries as he was accustomed. For it is not fitting on this account to take away the order received before, in which he is proved afterward to have fallen into bodily invalidity by an accident. Part II. GRATIAN. This, however, is not to be understood concerning all members. For one who has lost an eye by accident, although will is absent, nevertheless cannot obtain the priesthood. Hence Pelagius writes to Bishop Rufinus:

C. XIII. The rights of the priesthood are not to be furnished to one whose eye has been torn out.

If the evangelical admonition does not permit anger raging even as far as a word to leap forth, lest, if anyone has said "Raca" to his brother, he be liable to the fire of Gehenna, by what punishment do we think one is to be struck who not only impiously struck with his fist a man serving in the ministry of Levitical office, but, as if his hands did not suffice for the beating, was so carried away into anger at the devil's instigation that with a staff he not only struck but even tore out his brother's eye? And although an excess of this kind was to be struck by a graver penalty, your fraternity nevertheless did well to remove him from the office of the priesthood. Yet let this belong to your solicitude: establish also a place of penance and thrust him into some monastery, with only lay communion granted to him. In his place, moreover, it is necessary for you to ordain another priest, for according to the canons the rights of the priesthood cannot be granted to the one whose eye was torn out. Nor does it profit him that he lost his eye involuntarily, since no one is to be believed to have wished to lose an eye, and we do not find that the most sacred canons excepted in their rules any accident in the loss of an eye that would not impede one seeking to obtain the priesthood; rather, we see that they made this solely as a prohibition, so that one who lacks an eye cannot obtain priestly office. But neither can sacred order be granted in any way, as though in compensation for the injury, to the one who was

able to provoke his own priest to so great an anger that the latter lost the office in which he was and the former lost the possibility of his own advancement.

Distinction LVI

GRATIAN. Part I. The sons of priests also are not to be admitted to sacred offices. Hence Pope Urban II says:

C. I. The sons of priests are removed from sacred ministries.

We remove the sons of priests from sacred ministries unless they have been proved to live religiously either in monasteries or among canons. Part II. GRATIAN. But this is to be understood concerning those who were imitators of their father's incontinence. Yet if honesty of morals has made them commendable, by examples and authority they can become not only priests but even high priests.

[PALEA.

C. II. Hence Pope Damasus writes:

Pope Hosius was the son of Stephen the subdeacon. Pope Boniface was the son of Jocundus the priest. Pope Felix was the son of Felix, priest of the title of Fasciola. Pope Agapitus was the son of Gordian the priest. Pope Theodore was the son of Theodore, bishop of the city of Jerusalem. Pope Silverius was the son of Silverius, Bishop of Rome. Pope Deusdedit was the son of Stephen the subdeacon.] For Felix III, a Roman by nation, was born of his father Felix the priest. Likewise Gelasius, an African by nation, was born of his father, Bishop Valerius. Likewise Agapitus, a Roman by nation, drew his origin from his father Gordian the priest. Very many others also are found who, born of priests, presided over the Apostolic See. Hence Augustine says [Book *On the Good of Marriage*, c. 16]:

C. III. The vices of parents shall not be imputed to their children.

From whatever source human beings are born, if they do not follow the vices of their parents, they will be honorable and saved. For the seed of a human being from whatever human being is God's creation, and it will go badly for those who use it badly; it itself will never be evil. Just as the good children of adulterers are no defense of adulterers, so the bad children of married persons are no crime of marriages.

C. IV. Concerning the same.

Likewise John Chrysostom, above on Matthew, homily III [c. 1]. Let us never blush at the vices of our parents, but let us seek that one thing and always embrace it, namely virtue. For a person of this kind, even if he has a foreign mother, even if one polluted by fornication or defiled by any disgrace of this kind, will nevertheless be darkened neither by her lowliness nor polluted by her crime. For if his prior life by no means stains the fornicator himself when converted to better things, much more is one born of a prostitute and adulteress not discolored by the reproaches of his parents if he is adorned by his own virtue. Likewise: §1. One is altogether not—not at all—to be praised or blamed either for the virtue or the vice of one's parents; no one is truly obscure or illustrious from that. Indeed, let us say something even more considered and explicit: I do not know how, but one shines

more who, though from parents altogether alien to virtues, has himself nevertheless been wonderful by the power of God.

C. V. Not the fault of parents, but one's own, condemns each person.

Likewise Jerome in the epistle against Rufinus. To be born from adultery is not the fault of the one born, but of the one who begets. Just as in seeds the earth that warms them does not sin, nor the seed that is cast into the furrows, nor the moisture and heat by which the tempered grains sprout into a shoot, but, for example, the thief and robber who by fraud and force seizes the seeds, so the earth—that is, the womb—receives the human kind, receives what is its own and warms it; what has been warmed it gives bodily form; what has been given bodily form it distinguishes into members; and amid those straits of the sacred belly the hand of God always works, and the same one is creator of body and soul. Do not despise the goodness of the potter who fashioned you and made you as he willed. He is the power of God and the wisdom of God, who built for himself a house in the womb of the Virgin. Jephthah, numbered among holy men by the Apostle's voice, is the son of a prostitute. Esau from Rebecca and Isaac, hairy in mind as in body, degenerates like good wheat into darnel and oats, because the cause of vices and virtues is not in seeds but in the will of the one born.

C. VI. The iniquities of parents cannot harm their children.

Likewise Augustine [*Against Faustus*, Book XXII, c. 64]. That bridegroom who was to call the good and the bad to the wedding, corresponding to those invited, willed also to be born of the good and the bad, so that by his example they might learn that the iniquities of their parents cannot harm them.

C. VII. Not another's fault, but one's own, casts anyone down from the grade in which he serves.

Likewise Gregory [to Columbus, Bishop of Numidia, Book X, epistle 8]. It is proved sufficiently perverse and contrary to ecclesiastical judgment that anyone should be deprived in vain because of the desires of certain persons, when his own fault or crime does not cast him down from the office or grade in which he serves.

C. VIII. One born from adultery is not prohibited from the priesthood.

Likewise Jerome. Our Lord Jesus Christ willed to be born not only from foreigners but even from adulterous unions, furnishing great confidence to us that, in whatever manner we are born, provided that we imitate his footsteps, we are not separated from his body, whose members we have been made through faith. And just as he, the true pontiff, was born from adulterous unions, so anyone, in whatever order he was born, provided that he has perfect faith, fulfills in works what he holds by faith, is lettered, and is the husband of one wife, is by no means repelled from the priesthood. For Judah the patriarch lay with Tamar his daughter-in-law, and from that intercourse were born Perez and Zerah; from there afterward Salmon, who was a leader in the desert; from there Obed and from there Boaz; from there afterward Jesse, who was the father of David. From that progeny, moreover, the origin of Christ, who is the true priest, is drawn; and therefore, if we are his sons, we ought to imitate the things he did.

C. IX. A mother's condition does not separate anyone from the people of God, but one's own fault does.

Likewise Augustine, *On the One Baptism* [*Against the Donatists*, Book I, c. 15]. That Ishmael was separated from the people of God was not caused by his mother being a slave woman, but by fraternal discord; nor did the power of the wife, whose son he rather was, profit him, because by her marital rights he was both sown in the slave woman and received from the slave woman. Part III. GRATIAN. To the contrary, Boniface the Martyr to the King of the English:

C. X. The vices of parents pass even to their descendants.

If the nation of the English—as has been divulged throughout these provinces, is cast against us as a reproach in Francia and Italy, and is set before us as a reproach by the pagans themselves—has lived a foul life after the likeness of the Sodomite nation, despising lawful marriages, committing adultery, and luxuriating, it is to be thought that from such a mingling of prostitutes degenerate and ignoble peoples, raging with lust, are to be begotten; and that at last the whole people, inclining toward worse and more ignoble things, is finally to come forth neither strong in secular war, nor steadfast in faith, nor honorable to human beings, nor lovable to God, just as happened to other nations of Spain and to the peoples of Provence and the Burgundians, who, departing from God in this way, fornicated until the judge of such crimes permitted avenging punishments to come and rage through ignorance of God's law and through the Saracens. Hence the same Urban, making a distinction at the end of the preceding chapter, added:

C. XI. If the sons of priests are found religious, let them be ordained.

Unless they have been proved to live religiously either in monasteries or among canons.

C. XII. Concerning the same.

Likewise Alexander II. By apostolic authority we command you that, if you prove the one who was elected by the Church to be worthier than the other and his election to be canonical, supported by our authority you shall consecrate him. For because he is called the son of a priest, if the other virtues converge in him, we do not reject him, but, his merits supporting him, receive him with forbearance. GRATIAN. What is said concerning the sons of priests, however, seems to have been introduced by dispensation of the Church, and what is introduced by dispensation cannot be drawn into the consequence of a rule. Hence Urban [Pope II] writes to Bartholomew, Archbishop of Tours:

C. XIII. The sons of priests are not prohibited from the episcopate if the other virtues are found in them.

We do not reject the bishop-elect of Le Mans because he is called the son of a priest, if the other virtues converge in him; rather, his merits supporting him, we receive him patiently—not, however, so that this be assumed as a rule for the future, but counsel is being taken for the Church's peril for the present time. GRATIAN. Therefore, when those born of priests are read above to have been promoted to the highest pontificate, they are to be understood as born not of fornication but of lawful marriages, which were permitted to priests everywhere before the prohibition and are proved to be permitted to them in the Eastern Church even to the present day. §1. But that the vice of origin is denied to be imputed to the offspring seems contrary to that sentence, "The children of adulterers are an abomination to the Lord." Yet just as was said above concerning the sons of priests, so this

also seems to be understood concerning the children of adulterers: those are said to be an abomination to the Lord to whom their fathers' crimes descend by hereditary succession. Similarly that statement of Urban is to be understood which he writes to Patronus, Bishop of León:

C. XIV. Concerning the same.

Because, coming in simplicity to the Apostolic See, you humbly confessed a sin that seemed to impede the office of your pontificate—namely, that you were begotten of an unlawful mother whom your father is known to have known while his own wife was living—we, admonished by the grace of apostolic gentleness, recognizing you to be free from the other crimes that impede the priesthood both by your profession and by the testimony of the brethren who are with you, and hearing that your life is religious, absolve you from the bond of this sin and confirm you in the priestly office received.

Distinction LVII

GRATIAN. Likewise, one who is baptized while placed in sickness ought not to be ordained a priest. Hence in the Council of Neocaesarea [c. 12] it is read:

C. I. One who is baptized while placed in sickness shall not be ordained a priest.

If anyone has been baptized while placed in sickness, he ought not to be ordained a priest—for his faith is not voluntary but from necessity—unless perhaps afterward his zeal and faith have been approved, or a scarcity of men has required it.

Distinction LVIII

GRATIAN. Likewise, no one shall be assumed from the monastic habit to ecclesiastical office unless he has been offered by the will of his own abbot. Hence Gregory writes [to Marinianus, Bishop of Ravenna, Book VII, epistle 18]:

C. I. A monk shall not be ordained a cleric unless he was offered to the bishop by the abbot's will.

No monk shall be brought forth from a monastery to ecclesiastical office unless the abbot of the place, having been admonished, offers him to the bishop by his own will.

C. II. Concerning the same.

Likewise from the Fifth Council of Carthage [c. 13]. If anyone wishes either to promote to clerical status one found in another's monastery or to establish him as superior of the monastery in his own monastery, let the bishop who did this, separated from the communion of the others, be content only with the communion of his own people, and let the man continue neither as cleric nor as provost.

Distinction LIX

GRATIAN. Likewise, those who are not imbued with ecclesiastical disciplines and examined by the testing of time shall not aspire to the highest priesthood.

Hence Pope Zosimus [to Hesychius, Bishop of Salona, epistle I]. [PALEA.

C. I. One who is not imbued with ecclesiastical disciplines shall not aspire to the highest priesthood.

One who has not been imbued with ecclesiastical disciplines in order and instructed in divine service by the testing of time shall by no means presume to aspire to the highest priesthood of the Church; and not only shall his ambition be held ineffective, but action shall also be taken against his ordainers, so that they lack that order which, contrary to the precepts of the Fathers, they believed was to be presumed without order.]

C. II. No one shall approach priestly office unless tested through the individual grades.

If secular offices confer the chief place not upon those who have entered the vestibule of activity, but upon those examined through many grades, who is found so arrogant, so shameless, that in the heavenly military service—which is to be weighed more carefully and, like gold, tested by repeated fires—he desires immediately to be a leader when he had not first been a recruit, and wishes to teach before learning? Let him first grow accustomed in the Lord's camp, in the grade of readers, to the rudiments of divine service; nor let it be cheap in his eyes to become in order an exorcist, acolyte, subdeacon, and deacon—not by a leap, but through the periods established for ordination by the elders. Then let such a one approach the summit of the priesthood, so that he both fulfills the name of the age and his prior periods of service bear witness to the merit of his probity. From there he will rightly be able to hope for the place of the supreme pontiff. The excessive laxity of our fellow priests causes this: they seek the display of a multitude and think that some dignity is acquired for themselves from this crowd. Hence a numerous populace of such persons is found indiscriminately even in places where there is solitude, while they desire their parishes to be extended or lavish divine orders upon those to whom they can furnish nothing else. This ought always to be a matter of strict judgment. For everything great is rare.

C. III. A layman of whatever merit shall not aspire to the highest priesthood.

Likewise Gregory [Book VII of the Register, epistle 110]. It is fitting to embrace with no dissimilar detestation what has reached us: that certain men inflamed by desire for honor are tonsured when bishops die and suddenly become priests from laymen, and shamelessly seize the leadership of a religious profession though they have not yet learned even to be soldiers. What do we think—what will these furnish to their subjects, who do not fear to hold the place of governance before they touch the threshold of discipleship? Concerning this matter, it is necessary that, although each one is of blameless merit, he nevertheless first be exercised through the distinct offices of ecclesiastical order.

C. IV. One who is not imbued with ecclesiastical disciplines shall not aspire to the highest priesthood.

Likewise Celestine to the Bishops of Gaul [epistle II, c. 3]. Dearest brothers, we have learned that certain men have been ordained bishops and established at the summit of so great a dignity, contrary to the decrees of the Fathers, though they had held no ecclesiastical orders, by the usurpation of the one who recognizes that he did this, although the episcopate ought to be reached through those

grades concerning which caution has very frequently been given, so that those initiated in lesser offices may be strengthened for greater ones. For whoever desires to be a teacher ought first to be a disciple, so that he may be able to teach what he has learned; every training of life strengthens itself by this method toward that for which it strives. One who has by no means applied himself to letters cannot be a teacher of letters. One who has not grown through the individual periods of service cannot attain the order belonging to the merited period of service. Among these things, I ask, is the priesthood alone more worthless? Why is it granted more easily when it is fulfilled with greater difficulty?

Distinction LX

GRATIAN. Behold, it has been shown in part who can be promoted to the order of the priesthood and who cannot. Now it is to be considered from what orders persons are to be chosen as archpriest, provost, bishop, or archbishop. Concerning these it was established as follows in the Council of Pope Urban celebrated in Auvergne:

C. I. An archpriest, dean, or archdeacon shall be ordained only if a priest or deacon.

Let no bishop presume to institute an archdeacon in his church unless he is a deacon, nor to ordain an archpriest or dean unless they are priests. That this may be held more strictly, we prohibit and forbid it by apostolic authority.

C. II. No one shall be ordained as provost, archbishop, archpriest, or archdeacon unless a priest or deacon.

Likewise Pope Callistus [II]. Let no one be ordained as provost, no one as archbishop or archpriest, no one as dean, unless he is a priest or deacon; no one as archdeacon unless he is a deacon.

C. III. Concerning the same.

Likewise Innocent II [in the Roman Council, c. 10]. We renew and command that no one be ordained archdeacon or dean unless he is a deacon or priest.

But archdeacons, deans, or provosts who are below the orders named above, if, being disobedient, they have despised being ordained, shall be deprived of the honor received. We prohibit, moreover, that the aforesaid honors be granted to young men or to those established below sacred orders, but they shall be granted to those who shine by prudence and merit of life. GRATIAN. One of these rules was established because of the forwardness of certain persons who, having obtained the name of a provostship, despise the office and are unwilling to become priests; otherwise, however, it would be empty, since even those established in the subdiaconate can be elected bishop according to that statement of Pope Urban:

C. IV. No one shall be elected bishop unless established in sacred orders.

Let no one be elected to the episcopate unless he has been found living religiously in sacred orders. By sacred orders, moreover, we mean the diaconate and priesthood, for the primitive Church is read to have had these alone; but because subdeacons also minister at altars, we grant them when necessity requires it, provided that they are of proven religion and knowledge. We do not permit this

itself to be done without the knowledge of the Roman Pontiff or metropolitan. GRATIAN. The other rule—that no one be elected bishop or archbishop unless established in sacred orders—was established because of the dignity of the order.

Distinction LXI

GRATIAN. Part I. Likewise, laymen are not to be elected bishop, but are first to be tested through the individual orders. Hence Gregory to Brunhild, Queen of the Franks [Book VII of the Register, epistle 113]:

C. I. Priests are not to be ordained from laymen.

Priestly office in your regions has, as we have learned, been brought into such canvassing that, what is exceedingly grave, priests are suddenly ordained from laymen.

C. II. Concerning the same.

Likewise Pope Hormisdas to all the Bishops [established throughout Spain, epistle III, c. 1]. Care ought to be perspicacious in choosing or ordaining priests. For it is fitting that those who must preside over persons to be corrected be blameless. §1. One to whom the governance of the Church is entrusted ought to show his life by long testing.

[C. III. The same continuously in the same place.]

We do not deny that there are morals pleasing to God among laymen, but the institutes of the faithful seek for themselves tested soldiers. One ought to learn before teaching and to furnish to others from oneself, rather than receive, an example of religious conduct. It is fitting that one who must pray for the people be more corrected than the people. Let religious worship be handed on after long observance, so that he may shine; and let one who is to be instructed serve in clerical services, so that, when brought to the summit of the venerable grade, he may show what is the fruit of humility. §1. Nor do we prohibit only the consecration of laymen; rather, let no profane violator from among penitents even aspire to a grade of this kind. Let it be enough for him when he petitions that pardon is granted. With what conscience can one absolve a guilty person who knows that he confessed his own sins with the people as witness? For who who sees one lying prostrate a little before would venerate him as bishop? Bearing the stain of a memorable crime, he does not possess the shining dignity of the priesthood.

C. IV. Concerning the same.

Likewise Pope Innocent [to Aurelius, Bishop of Carthage, epistle XII]. It is wretched for one who was never a disciple to be made a master, and for one who had never served a priest in any grade to be made high priest.

C. V. Concerning the same.

Likewise Bishop Leo [to the African Bishops, epistle LXXXV, otherwise LXXXVII, c. 1]. We marvel that, among you, either the presumption of those canvassing or popular tumult has prevailed so greatly by occasion of the disturbed time that the pastoral summit and governance of the Church were entrusted to all manner of unworthy persons established far outside priestly merit. This is not

to take counsel for the people, but to harm them; not to furnish governance, but to increase peril. For the integrity of those presiding is the salvation of their subjects, and where obedience is unharmed, there the form of doctrine is sound. §1. But primacy, etc. And below. §2. But if in any grades of the Church care is to be taken providently and knowingly that in the house of the Lord nothing be disordered and nothing inverted, how much more must one labor that there be no error in the election of the one who is established above all grades? For the state and order of the Lord's whole household will totter if what is required in the body is not found in the head. Where is that precept of the blessed Apostle Paul sent forth through the Spirit of God, by which in the person of Timothy the whole number of Christ's priests is instructed and from there it is said to each one of us: "Impose hands hastily upon no one, nor communicate in the sins of others"? What is it to impose hands hastily? etc. And below. §3. For just as one who maintains right judgment in choosing a priest acquires for himself the fruit of a good work, so one who elevates an unworthy man into the college of his own dignity afflicts himself with grave loss. For what is contained in general institutes is not to be passed over in the person of anyone, nor is that honor to be thought lawful which was conferred contrary to the precepts of divine law. §4. Deservedly the venerable sanctions of the blessed Fathers, when they spoke of the election of priests, judged only those fit for sacred administrations whose whole age, from the beginnings of boyhood to more perfect years, had run through the periods of ecclesiastical discipline, so that prior life might furnish testimony for each one, and there can be no doubt concerning the advancement of one to whom the reward of a higher place is owed for many labors, chaste morals, and vigorous acts. §5. For if it is unworthy to attain the honors of the world without the support of time and without the merit of labor, and those whom proofs of probity do not aid are accustomed to be marked for canvassing, how diligent and how prudent must the dispensation of divine gifts and heavenly dignities be?

C. VI. None are to be chosen for the episcopate except those commended by an approved life.

Likewise from the Council of Laodicea [c. 12]. A bishop ought not to be established in the primacy of a church apart from the judgment of the metropolitans and neighboring bishops. Nor shall any be elected except those whom a life long known and approved commends, and likewise if they have been proved in the word of faith and in right reason through their conduct.

C. VII. Concerning the same.

Likewise Celestine to all the orthodox [to the Bishops of Apulia and Calabria, epistle III, c. 2]. What will it profit clerics to have served through the individual periods of service and spent their whole life in the Lord's camp, if those who are to be priests are sought from the laity—persons who, serving the world and knowing nothing of the whole ecclesiastical order, strive with immoderate cupidity to leap across into another's honor by an excessively hasty leap and, with reverence for ecclesiastical discipline trampled, to pass into another kind of life? Therefore, dearest brothers, it is necessary that we oppose such persons, and by these decrees we admonish your fraternity that no one admit a layman to clerical order and permit that to be done by which he both deceives the layman and generates for himself causes by which he is made guilty under the established decretals.

C. VIII. The governance of the Church is not to be entrusted to the untaught and inexperienced.

Likewise Leo [I, epistle LXXXV, otherwise LXXXVII, c. 1, to the African Bishops]. We establish that apostolic and canonical decrees be violated in no respect, and that the Church of the Lord not be entrusted for governance to those who, ignorant of lawful institutes and knowing nothing of all humility, do not wish to take their increase from the lowest things but to have their beginning from the highest, since it is exceedingly unjust and absurd that the inexperienced be preferred to masters, the new to the ancient, and the untaught to the meritorious. GRATIAN. By all these authorities laymen are prohibited from being elected to the episcopate. Part II. §1. To the contrary, blessed Nicholas was elected bishop from the laity; blessed Severus was assumed from wool-working to the archiepiscopate; blessed Ambrose, when he was not yet baptized, was elected archbishop. §2. But it must be known that ecclesiastical prohibitions have their own causes, and when these cease, the prohibitions themselves also cease. For the cause why a layman should not be elected bishop was this: lay life, not instructed in ecclesiastical disciplines in order, does not know how to furnish others examples of religion that it has not learned in itself by experience. Therefore, when any layman by the merit of his perfection surpasses clerical life, his election can be held valid by the example of blessed Nicholas, Severus, and Ambrose.

[C. IX.] Hence the same Ambrose in the epistle [LXXXII]

to the people of Vercelli [says concerning himself]: "A neophyte is prohibited from being ordained, lest he be lifted up by pride. But if the humility fitting for the priesthood is not lacking, where the cause does not adhere, the vice is not imputed. Therefore, the western bishops approved my ordination by judgment, and the eastern bishops also by example."

C. X. A *scholasticus* from the forum or a man from an administration can be requested as bishop.

Likewise that statement of the Council of Sardica is objected [c. 13]. Bishop Hosius said: And I judge this also necessary, that it be treated most diligently: if perhaps either a rich man or a *scholasticus* from the forum or a man from an administration has been requested as bishop, let him not be ordained before he has first discharged the function of reader and the office of deacon or priest, and thus let him ascend through the individual grades, if he is worthy, to the summit of the episcopate. Part III. GRATIAN. But it is one thing to be requested, another to be elected. One bound by the obligations of the curia is requested from the emperor; a cleric of another city, from his own bishop. But no one is elected unless established in sacred orders. For an election is made with the solemnity of a decree strengthened by the subscriptions of all; but a request is made by a simple petition. Blessed Gregory indicates this distinction in the Register [Book II, epistle 19], writing to a certain Bishop:

C. XI. The election of a bishop ought to be made with the solemnity of a decree strengthened by the subscriptions of all.

When the bishop has been requested, let him come to us to be consecrated with the solemnity of a decree strengthened by the subscriptions of all and with the testimony of your Charity's letters. GRATIAN. Thus blessed Ambrose, before receiving baptism, was requested by the emperor, not elected. Part IV. GRATIAN. Likewise, clerics of one church are not to be preferred in an election to

those who serve well in their own church. Hence Pope Celestine [to the Bishops of Gaul, epistle II, c. 4]:

C. XII. Foreigners shall not be preferred to those who have merited well in their own churches.

Nor shall outsiders, strangers, and those previously unknown be preferred to those who have merited well in their own churches, to the exclusion of those who worthily receive the testimony of their own citizens.

C. XIII. Concerning the same.

Likewise [the same epistle, c. 5]. Let no bishop be given to the unwilling. Only then let another be elected from another church, if from the clergy of that city for which a bishop is to be ordained no worthy person—which we do not believe will happen—can be found. For those men must first be rejected, so that some from other churches may deservedly be preferred. Let each person have the fruit of his service in the church in which he has spent his life through all the offices. Let another by no means creep into another's periods of service, nor let one dare to claim for himself the reward owed to another. Let clerics have the faculty of resisting if they see themselves overburdened, and let them not fear to reject one whom they see thrust upon them from the side. For although they do not have a reward as their due, they ought to have free judgment concerning the one who is to rule them.

[PALEA.

C. XIV.

In the ordination of a provost, this principle shall always be considered: that the one be established whom the whole congregation in concord, according to the fear of God, or even a part of the congregation, although small, has chosen by sounder counsel. The one to be ordained shall be chosen by merit of life and wisdom, even if he was last in the order of the congregation. But if even the whole congregation—God forbid—by common counsel chooses a person consenting to its vices, and the vices themselves in any way become known to the bishop to whose diocese that place belongs, or to other neighboring provosts or Christians, let them prohibit the consent of the depraved from prevailing and establish a worthy steward for the house of God.]

C. XV. Concerning the same.

Likewise Gregory to the citizens of Naples [Book VIII of the Register, epistle 40]. Let it belong to your zeal to provide also another who is suitable, so that, if perhaps Peter, whom you assert was elected by you, does not appear fit for this order, there may be one to whom your election can turn. For it will be a grave reproach to that clergy if, should this man perhaps not be approved, they say that they have no other who ought to be elected.

C. XVI. Concerning the same.

Likewise Gregory in the Register [Book XI, epistle 16]. A report directed to us disclosed the death of Victor, bishop of the city of Palermo. Therefore we solemnly delegate the work of visitation of the destitute church to your fraternity. And so let your fraternity hasten to go to the aforesaid church and take care by continual exhortations to admonish the clergy and people of that same church that, with

partisanship removed, by one and the same consent they should seek to have set over them as priest one who can be found worthy of so great a ministry and is by no means rejected by the venerable canons. §1. We also admonish your fraternity not to permit anyone from another church to be elected unless perhaps among the clerics of that city in which you exercise the office of visitation no one worthy of the episcopate—which we do not believe will happen—can be found. Before all things, you will provide that laypersons of whatever merit of conduct do not presume to aspire, lest they both fail to obtain the effect of their own will and you—God forbid—incur peril to your order. But whatever monasteries are established in that parish, we grant shall be under your care and ordering until its own bishop has been ordained there.

C. XVII. Concerning the same.

Likewise Pope Pelagius [II] to Eucarpus, Bishop of Messina. We enjoin upon you the visitation of the church of Catania, whose bishop we learned from a report received from the clergy to have passed from this light. For it is impossible for us to entrust the causes that pertain to the Lord to anyone else in that province, at least in the regions of Syracuse, unless perhaps through you God should now will to choose in the church of Catania such a one concerning whose conscience we can be secure, so that we may remove these labors a little from you. Therefore, let your Charity proceed immediately to the aforesaid church of Catania and, with God's aid, compel and persuade them to elect a man from the clergy who has neither wife nor children nor any crime hostile to the canons; and immediately transmit him to the city of Rome with the decree and the testimony of your report.

C. XVIII. One who is elected bishop shall not be guilty of crimes that the sacred law punishes by death.

Likewise Gregory to Bishop Passivus [Book X, epistle 13]. Your fraternity well knows for how long Aprutium has been destitute of pastoral solicitude; there we long sought who ought to be ordained and were by no means able to find anyone. But because Opportunus has been greatly praised to me in his morals, zeal for psalmody, and love of prayer, and is said to lead a religious life in every way, we wish your fraternity to cause him to come to you and to admonish him concerning his soul, so that he may grow in good pursuits. And if no crimes meet him that are to be punished by death according to the rule of sacred law, then he is to be exhorted either to become a monk or to be made a subdeacon by you; and after a little time, if it pleases God, he himself ought to be promoted to pastoral care. GRATIAN. One to whom a visitation is enjoined shall not permit anything concerning the property of that church to be presumed by anyone. Hence Gregory [to Bishop Gaudentius, Book IV, epistle 12]:

C. XIX. One to whom visitation of a church has been enjoined shall not permit anything concerning its property to be presumed by anyone.

Since Festus, bishop of the church of Capua, passed from this light while situated in the city of Rome, it was our care—which is expended upon all churches—to direct the present writings to your fraternity, so that you may approach as visitor of the church mentioned, yet in such a way that you permit nothing concerning promotions of clerics, revenue, ornaments and ministries, or whatever can belong to the aforesaid place, to be presumed by anyone. Rather, it is fitting that you exhibit all vigilance and caution concerning the clergy and people of that church, so that they ought diligently and devoutly to serve in vigils and ecclesiastical service.

Distinction LXII

GRATIAN. Part I. It has been shown briefly from what orders persons are to be chosen for what grades. Now it is to be seen by whom they are to be chosen and consecrated. Election belongs to the clerics, consent to the people. Hence Pope Leo [to Rusticus, Bishop of Narbonne, epistle XC to XCII, c. 1]:

C. I. Those who are neither elected by clerics nor sought by the people are not to be held among the bishops.

No reason permits those to be held among the bishops who were neither elected by clerics, nor sought by the people, nor consecrated by the comprovincial bishops with the metropolitan's judgment. Hence, since a question concerning an honor badly received often arises, who doubts that what is not shown to have been conferred cannot be bestowed by these men? But if any clerics were ordained by these pseudo-bishops in their churches, etc.; below, in the cause of the simoniacs [C. 1 q. 1 c. 40].

C. II. The people ought not to go before, but to follow.

Likewise Celestine [Pope to the Bishops of Apulia and Calabria, epistle III, c. 3]. The people are to be taught, not followed; and we also, if they do not know, ought to admonish them what is permitted and what is not permitted, not to furnish assent to them. Whoever has attempted to try prohibited things will feel that the censure of the Apostolic See will by no means be lacking. For the things we do not correct by the authority of admonition alone, it is necessary that we punish through severity consonant with the rules. Therefore, we wish this to become known throughout all churches that lack their own rulers, so that no one perhaps deceive himself with flatteries of some hope. GRATIAN. But unless he has been canonically elected, he ought not to be consecrated. Hence Pope Callistus [II]:

C. III. No one is to be consecrated as bishop unless canonically elected.

Let no one consecrate as bishop anyone who has not been canonically elected. But if this has been presumed, both the one consecrating and the one consecrated are to be deposed without hope of restoration.

Distinction LXIII

GRATIAN. Part I. Laymen, however, ought in no way to insert themselves into an election. Hence Pope Adrian, [in the Eighth Synod celebrated at Constantinople under him, c. 22]:

C. I. Laymen are not to insert themselves into the election of pontiffs.

Let no one among lay princes or powerful men insert himself into the election or promotion of a patriarch, metropolitan, or any bishop, lest, namely, a disorderly and incongruous confusion or contention arise, especially since it is fitting that no one among those possessing power or the other laymen have any power in such matters. And below: Whoever among secular princes or powerful men, or whatever layman of another dignity, shall attempt to act against the common, concordant, and canonical election of the ecclesiastical order, let him be anathema until he obeys and consents to whatever the Church has shown itself to will concerning the ordination and election of its own prelate.

C. II. On the same.

Likewise from the Eighth Synod, [action I]. Pope Adrian II—according to what Nicholas his predecessor had arranged—sent his envoys, namely Donatus, Bishop of Ostia, Stephen, Bishop of Nepi, and Marinus, deacon of the holy Roman Church, to Emperor Basil and his sons, the Augusti Constantine and Leo, at Constantinople. Anastasius, librarian of the Roman see, skilled in both languages, namely Greek and Latin, also went with them. When a synod had been assembled—which those meeting there called the eighth universal synod—they quieted the schism that had arisen over the deposition of Ignatius and the ordination of Photius, anathematizing Photius and restoring Ignatius. In it the following was enacted: In agreement with the earlier councils, this holy and universal synod has defined, enacted, and promulgated by law that the consecrations and promotions of bishops are to be made by the election and decree of the clergy and by the college of bishops, and that no one among lay princes or powerful men is to insert himself into the election or promotion of a patriarch, metropolitan, or any bishop, lest, namely, disorderly and incongruous contention or confusion arise from this, especially since it is fitting that no one among those possessing power or the other laymen have any power in such matters, but that he remain silent and attend to his own affairs until the election of the future pontiff duly receives its completion from the college of the Church. But if one of the laymen is invited by the Church to take counsel and cooperate, it is permissible for such a man, with reverence, to comply with those inviting him, if he should wish. For in this way he duly promotes a worthy pastor for himself, unto his own salvation and that of the Church.

C. III. The emperor ought not to take part in the election of bishops.

Likewise from the *Tripartite History*, [book VII, c. 8]. When Emperor Valentinian came from the East to the western regions—as the ecclesiastical history relates—Auxentius having died, the teacher of Arian perfidy who had ravaged the church of Milan like a wolf, and when he wished, by God's ordering, that a catholic bishop be consecrated there, he summoned the bishops and addressed them as follows: "You who are learned in the divine utterances know plainly what sort of man a pontiff ought to be, and that it befits him to govern his subjects not by word alone but also by his manner of life, to show himself an imitator of every virtue, and to have a good manner of life as the witness of his teaching. Therefore establish such a man in the pontifical see, one to whom even we, who govern the empire, may sincerely submit our heads and whose admonitions, whenever we sin as men, we may necessarily receive as the medicines of one who heals." When the emperor had said these things, the synod asked that he himself, rather, make the determination, since he was wise and pious. But he said: "Such an election is above us. For you, who have obtained divine grace and shine with that splendor, will be better able to elect." Then the priests, going out from the episcopal residence, deliberated. § 1. But when, by divine ordering, Ambrose, though not yet baptized, had been elected, the exultant emperor said: "I give thanks to you, almighty Lord and our Savior, because I had entrusted bodies to this man, but you have entrusted souls, and you have shown my judgment to accord with your justice." And when Saint Ambrose was grieved at what had happened—as he himself wrote in his letters—the emperor strengthened him and said: "Do not fear, because the God who elected you will always help you, and I shall always be your helper and defender, as befits my rank."

C. IV. A bishop is to be elected by apostolic authority, not by royal favor.

Likewise Pope Nicholas [I] to King Lothar. Moreover, know that it has been reported to us that you permit no one who is to be promoted to the episcopate in your kingdom to be elected unless he favors you. Therefore, by apostolic authority and under adjuration of the divine judgment, we enjoin you not to permit anyone to be elected in the city of Trier or in Cologne before a report about this is made to our apostolate.

C. V. One who attains the summit of the episcopal honor by royal appointment is not to be received by the comprovincial bishops.

Likewise from the Council of Paris, [I, c. 8]. If anyone, with excessive temerity, shall presume to seize the summit of this honor through royal appointment, let him in no way deserve to be received by the bishops of that place's province, who recognize that he was unduly appointed. If any one of the comprovincial bishops shall presume to receive him contrary to the prohibitions, let him be separated from all the brothers and removed from the charity of them all.

C. VI. On the same.

Likewise from the Council of Laodicea, [c. 13]. The crowds are not to be permitted to conduct the election of those who are to be promoted to the priesthood.

C. VII. The election of a bishop or priest made by princes is to be void.

Likewise from the second action of the Sixth Synod of 350 bishops, [c. 3]. Every election of a bishop, priest, or deacon made by princes is to remain void according to the rule which says: "If any bishop, making use of secular powers, shall obtain churches through them, let him be deposed and separated, together with all who communicate with him."

C. VIII. Those who are to be promoted to the clergy are not to be elected by the people.

Likewise from the Council of Pope Martin, [c. 1]. It is not permissible for the people to make the election of those who are promoted to the priesthood, but let it rest in the judgment of the bishops, so that they themselves may test whether the man is instructed in discourse, faith, and spiritual life. GRATIAN. By all these authorities laymen are excluded from the election of priests, and the necessity of obeying is enjoined upon them, not the liberty of commanding. Part II. To the contrary, however, Blessed Gregory writes to John, Bishop of First Justiniana in Illyricum, [book IV, epistle 15]:

C. IX. The will of the prince is desired in the ordination of a pontiff.

Since, therefore, the report received from the brothers and fellow bishops declares that, by the united consent of the entire council and the will of the most serene prince, you have been summoned to the station of the priesthood, we have rendered thanks to our Savior with great exultation. We too consent in all things to the person of your fraternity, and we beseech almighty God that, just as his grace has elected your charity, so he may guard it in all things by his protection.

C. X. The clergy and people are to take part in the election of a pontiff.

Likewise Gregory to John the Subdeacon, [book II, indiction 11, epistle 30]. Inasmuch as it is established that the apostolic see is set above all churches in authority, so, among our manifold cares,

we are also greatly concerned about that place where our judgment is awaited for the consecration of a bishop. Therefore, upon the death of Laurence, Bishop of Milan, the clergy made known to us by their report that they had unanimously consented to the election of our son Constantius, their deacon. But because that report was not subscribed, lest we omit anything that pertains to caution, it is therefore necessary for you, supported by the authority of this precept, to proceed to Genoa. And because many of the Milanese dwell there, driven by barbarian savagery, you must summon them all together and examine their wishes. And if no diversity separates them from unity in the election—if indeed you learn that the wishes and consent of all persist in favor of our aforesaid son Constantius —then, with the Lord's aid, you are to cause him to be consecrated by his own bishops, as the custom of antiquity requires, with the assent of our authority, so that, this custom having been preserved, both the apostolic see may retain its proper vigor and may not diminish rights granted by it to others.

C. XI. The people ought to be present in the election of a bishop.

Likewise Pope Gelasius to Bishops Philip and Gerontius. By a petition presented to us, the people of Dictrensis lamented that they had long been scattered without the governance of a ruler of their own. And, as is asserted, the man said already to have been approved by us is now thought to have been elected by a few persons of little standing, although it pertains to us to compel everyone by repeated admonition that they consent as one to whomever they see to be worthy of the priesthood and without any reproach. And therefore, dearest brothers, you must repeatedly summon priests and deacons from all the parishes of the aforesaid place and the whole multitude, so that, not according as it has pleased each person, but with concordant minds, and with your admonition, they may seek for themselves, solely with regard for the divinity, such a person as no opposition can recall from the prescribed statutes.

C. XII. On the same.

Likewise Stephen, Bishop, servant of the servants of God, to Romanus, Archbishop of Ravenna. We wish your fraternity to know that it has reached our ears that the Bishop of Imola has departed from this light; and we have heard that division among the people has arisen in the election of his successor. Since this often happens, as individual men seek the things that are their own, not those of Jesus Christ, we do not greatly marvel at it. Nevertheless, your solicitude must be applied especially to this, that, when the clergy and people have been summoned, such a man may be elected there through God's mercy as is not opposed by the sacred canons. For the election belongs to the priests, and the consent of the faithful people is to be applied, because the people are to be taught, not followed.

C. XIII. On the same.

Likewise Pope Nicholas to John, Archbishop of Ravenna. Do not consecrate bishops throughout Emilia except after the election of the clergy and people.

C. XIV. On the same.

Likewise Pope Pelagius to Tullianus, Bishop of Grumentum. We have received the letters of your charity, by which you signify that Latinus your deacon is requested for the episcopate of the church of

Marcelliana by the clergy and all who assemble there. Therefore we say this: if all elect him, and you are willing to grant him, know that it is pleasing to us; and, if he can, let him hasten to arrive before the holy day, so that on the very Saturday of the great night, after the baptism, he may, with God's grace, be ordained.

C. XV. The prince's rescript is necessary for those to be ordained.

The same to Laurence, Bishop of Centumcellae. By an official report of the most devoted soldiers who are stationed there in the city of Centumcellae, sent to us, they make known that they have obtained a rescript of the most clement prince, which commanded that a priest, deacon, and subdeacon be made for them. Therefore we exhort your affection to see the persons themselves and inquire diligently lest they have committed anything against the canons; and if you find them blameless and see that the testimony concerning their life is praiseworthy, when the middle week of Easter comes—if the Lord wills and if we live—do not delay in promoting each one through the offices that we have foretold.

C. XVI. The Pope asks the Augusti that they deign to grant the church of Rieti to a certain elected man.

Likewise Leo IV to the Augusti Lothar and Louis. The church of Rieti, which has remained destitute of pastoral care through the span of so many years, deserves to be raised up by the arm of your greatness and protected by the covering of governance. Hence, after first addressing you with a greeting, we beseech your clemency that you deign to grant that church to the humble deacon Colonus to govern, so that, your permission having been received, we may be able, with God's help, to consecrate him bishop there. But if you do not wish him to be appointed bishop in the aforesaid church, may your serenity deign to grant him the church of Ascoli, which remains widowed, so that, having been consecrated by our pontificate, he may be able to render thanks to almighty God and to your empire.

C. XVII. By the king's precept Colonus is ordained bishop of the church of Rieti by the Apostolic Lord.

Likewise to Countess Rita. The lord emperor and empress directed to us by their letters that we ought to make Colonus bishop in the church of Rieti, which had appeared destitute of the office of a pastor for a long time already, as indeed we have done.

C. XVIII. The emperor's letter is desired in the confirmation of an election.

Likewise Stephen to Count Guido. Having read the writings of your sagacity, which declared that, upon the death of the bishop of the church of Rieti, its clergy and people had elected their future bishop and that through your solicitude he had been sent to us to be consecrated, lest that church remain long without its own pastor, we—grieving at the death of his predecessor—have for the present omitted to ordain the elected man so very quickly, notwithstanding the unanimity and canonical election of that church, as you commanded, because he brought us no imperial letter of release, as is customary. This matter is, of course, doubtful to us; therefore we deferred obeying your will in this, lest the imperial mind take it most harshly in any way. But knowing that the church of the Lord ought not to remain long without its own pastor, we command your glory—since we ought

not to have acted otherwise—that your solicitude obtain imperial permission, as ancient custom dictates, and that an imperial letter be directed to us, in the manner we believe you know. Then we shall obey your will in this and, with the Lord's help, shall consecrate that elected man. Dearest son, may you in no way receive this with displeasure.

C. XIX. A metropolitan is to be ordained by the will of the clergy and citizens.

Likewise Pope Leo [I, to Anastasius, Bishop of Thessalonica, epistle LXXXII, otherwise LXXXIV, c. 6]. When a metropolitan has died and another is to be substituted in his place, the bishops of the province ought to assemble at the metropolitan city, so that, after the will of all the clergy and citizens has been examined, the best man among the priests or deacons of that church may be ordained.

C. XX. The election of an archpriest is to be made with the clergy and people.

Likewise Isidore in the book *On Offices*. If archpriests in the parishes have died or have been expelled from there for some offense, let the archdeacon proceed there as quickly as possible and conduct an election with the clerics and people of that parish, so that a worthy pastor may be established for the house of God and, while he is being ordained, that parish may be guarded by the archdeacon's providence.

C. XXI. One elected as Roman Pontiff is not to be ordained unless the decree concerning him is first presented to the emperor.

Likewise from the deeds of the Roman Pontiffs. Agatho, a Sicilian by nation—during whose legation John, Bishop of Porto, celebrated public masses in Latin on the Sunday within the octave of Easter in the church of Saint Sophia before the prince and patriarch—received, according to his petition, an imperial rescript by which the sum customarily given for effecting a pontiff's ordination was remitted, yet on this condition: that if, after his passing, an election should happen to be made, the man elected ought not to be ordained unless the general decree were first brought into the royal city according to ancient custom, so that the ordination ought to prosper with their knowledge and command. § 1. Likewise Vitalian, a native of Segni, sent his representatives with a synodical letter, according to custom, to the most pious princes in the royal city, giving notice of his ordination.

C. XXII. The emperor has the right to elect the pontiff.

Likewise from the *Ecclesiastical History*. Pope Adrian asked King Charles to come to Rome to defend the possessions of the Church. Charles, coming to Rome, besieged Pavia, and, leaving his army there, was honorably received by Pope Adrian at Rome on the holy Resurrection. After the holy Resurrection he returned to Pavia and captured King Desiderius; then, returning to Rome, he convened a synod there with Pope Adrian in the Lateran patriarchium, in the church of the Holy Savior, which synod was celebrated by 153 religious bishops and abbots. Pope Adrian and the entire synod handed over to Charles the right and power to elect the Pontiff and to ordain the apostolic see. They also granted him the dignity of the patriciate. Furthermore, the synod determined that the archbishops and bishops throughout the individual provinces were to receive investiture from him, and that no bishop was to be consecrated by anyone unless approved and invested by the king; and it

bound with the bond of anathema whoever should be against this decree and commanded that, unless he came to his senses, his goods be confiscated.

C. XXIII. The election of the Roman Pontiff pertains to the emperor's right.

Likewise Pope Leo, in the synod assembled at Rome in the church of the Holy Savior. Following the example of Blessed Adrian, bishop of the apostolic see, who granted to the lord Charles, most victorious king of the Franks and Lombards, the dignity of the patriciate, the ordination of the apostolic see, and the investiture of bishops, I too, Leo, servant of the servants of God, bishop, together with all the clergy and the Roman people, enact, confirm, and corroborate, and through our apostolic authority grant and bestow on the lord Otto I, king of the Germans, and his successors in this kingdom of Italy, in perpetuity, the power to elect his successor and to ordain the Pontiff of the supreme apostolic see, and also through him the archbishops or bishops, so that they may receive investiture from him and consecration from those from whom they ought, excepting those whom the emperor has conceded to the Pontiff and archbishops; and that henceforth no one, of whatever dignity or religious status, is to have the power to elect either a patrician or the Pontiff of the supreme apostolic see, or to ordain any bishop, without the consent of the emperor himself—provided, nevertheless, that it be done without any payment—and that he himself be patrician and king. But if someone is elected bishop by the clergy and people, let him not be consecrated unless he is approved and invested by the aforesaid king. If anyone shall attempt anything against this apostolic authority, we decree that he is to be subject to excommunication and, unless he comes to his senses, is to be punished by irrevocable exile or struck with the ultimate penalties.

C. XXIV. At the command of the princes, Maximus is remitted the fact that he was ordained without apostolic authority.

Likewise Gregory [book IV of the *Register*, epistle 34, to the Empress Constantina]. The bishop of the city of Salona was ordained without the knowledge of me or my representative, and a thing was done that occurred under no previous princes. On hearing this, I immediately sent to that same transgressor, who was irregularly ordained, that he was in no way to presume to celebrate the solemnities of masses at all unless I first learned from the most serene lords whether they had commanded this to be done; and I commanded this to him with the imposition of excommunication. But, holding me in contempt and despising me, and emboldened by certain secular men to whom, it is said, he gave many rewards after stripping his church bare, he has presumed to celebrate masses up to the present and has refused to come to me according to the command of the lords. But I, obeying the command of their piety, have so remitted from my heart to that same Maximus, who was ordained without my knowledge, the fact that at his ordination he presumed to pass over me or my representative, as though he had been ordained with me as the author. Yet his other perverse acts—namely the bodily crimes of which I have learned, or that he was elected with payments, or that he presumed to celebrate masses while excommunicated—I cannot, for God's sake, pass by without inquiry. And if he delays long in coming to me, I shall in no way cease to exercise canonical severity against him.

C. XXV. The prince's assent is desired in the election of bishops.

Likewise from the Council of Toledo, [XII, c. 6]. Since the speed of messengers traveling across lands spread far and wide is impeded, with the result either that the death of a prelate cannot be reported with the kings hearing of it or that the prince's free choice concerning the successor of a dying bishop cannot be awaited, there often arises either a difficulty for our order in reporting such matters or an incalculable burden for the royal power while it awaits our counsel concerning the substitution of pontiffs. Hence it pleased all the pontiffs of Spain and Gaul that, with the privilege of each province preserved, it remain permissible henceforth for the pontiff of Toledo to appoint as bishops in the sees of their predecessors, in any provinces whatsoever, whomever the royal power has elected and the judgment of the aforesaid Bishop of Toledo has proved to be worthy, and to elect successors when bishops die, yet so that whoever has been ordained, within the space of three months after the time of his ordination, is to approach in order to see the presence of his own metropolitan. GRATIAN. The elections of the supreme pontiffs and of other lesser prelates were also once presented to the emperors, as is read concerning the election of Blessed Ambrose and Blessed Gregory. From these examples and the aforesaid authorities it is plainly gathered that laymen are not to be excluded from an election, nor princes rejected from the ordering of churches. But when the people are commanded to take part in an election, they are not directed to be summoned to make the election, but to give consent to the election. For the election belongs to the priests—as is read at the end of the preceding chapter of Pope Stephen—and it belongs to the faithful people humbly to consent. Therefore, the desire of the people is sought as to whether it accords with the election of the clerics. For then will a bishop be duly appointed in the Church of God, when the people together acclaim the one whom the clergy have elected by a common vote. Hence Pope Celestine says, [to the Bishops of Gaul, epistle II, c. 5]:

C. XXVI. It belongs to the people not to elect, but to consent to the election.

The consent and desire of the clergy and people are to be sought.

C. XXVII. On the same.

Likewise Leo I, [to the Bishops of the province of Vienne, epistle LXXXVII, otherwise LXXIX]. In the ordinations of priests, let the wishes of the citizens, the testimonies of the peoples, the judgment of the honored men, and the election of the clerics be established. And below: Let those who are to be priests be requested through peace and quiet; let the subscription of the clerics, the testimony of the honored men, and the ranks of the assembly and people be obtained. Part III. GRATIAN. Usage and enactment, however, handed down that the elections of Roman Pontiffs and other bishops were to be reported to princes and emperors because of the dissensions of schismatics and heretics, by which the Church of God, shaken at times, was placed in danger; against them the Church is frequently read to have been fortified by the laws of the most faithful emperors. Therefore, the election of catholics was presented to the princes, so that, strengthened by their authority, none of the heretics or schismatics would dare oppose it, and so that the princes themselves, as most devoted sons, would consent to him whom they saw elected as a father for themselves and would stand forth as his supporters in all things, just as Valentinian is read to have said to Blessed Ambrose: "Do not fear,

because the God who elected you will always help you, and I shall always stand forth as your helper and defender, as befits my rank." Hence Pope Stephen enacted, saying:

C. XXVIII. The Roman Pontiff is to be ordained in the presence of the emperor's legates.

Because the holy Roman Church, over which by God's authorship we preside, suffers many acts of violence when a Pontiff dies—which are inflicted for this reason, that the Pontiff's consecration occurs without imperial knowledge and envoys have not been sent by the emperor according to canonical rite and custom to prevent scandals from occurring—we will that, when a Pontiff is to be instituted, the one who is to be ordained be elected by the bishops assembling and by all the clergy, in the presence of the senate and people, and that, having thus been elected, he be consecrated by all in the presence of the imperial legates; and let no one, at his peril, dare by a new invention to extort any oaths or promises except those which ancient custom requires,

lest either the Church be scandalized or the imperial honor be diminished. Part IV. GRATIAN. But because emperors, sometimes not knowing their measure, wished to be numbered not among those who consented but as the foremost of those who distributed—or rather exterminated—and because, having frequently fallen into the perfidy of heretics, they tried to assault the unity of the catholic mother Church, the enactments of the holy Fathers were issued against them, so that they were not to insert themselves into an election, and whoever obtained a church by their support was to be bound by the bond of anathema. Divine Scripture likewise says that after Hezekiah destroyed the high places, shattered the statues, cut down the groves, and broke apart the bronze serpent that Moses made—namely, because God had commanded that serpent to be made lest the people perish by the death of serpents, the people themselves had begun to worship and venerate it, and for that reason the former man destroyed what the latter had made at God's command. And by this, this authority is to be regarded as great in the Church: that if some of our predecessors and superiors did certain things that at that time could be without fault, but afterward are turned into error and superstition, they are to be destroyed by their successors without any delay and with great authority. Finally, elections of Roman Pontiffs are read to have been celebrated both in the presence of imperial legates and without their being consulted, and at last the emperors themselves, with a religious affection of mind, renounced the aforesaid privileges, conferring in addition many gifts upon the Church of God.

C. XXIX. Adrian [II] is elected to the pontificate without the emperor's legates being consulted.

When Adrian II was being drawn from the church of the Mother of God our Lady, which is called "At the Manger," to the Lateran patriarchium upon his election to the Roman pontificate, he was borne along eagerly by the people, clergy, and leading men. When the envoys of Emperor Louis heard this, they took it ill, indignant, namely, that although they were present, they had not been invited and had not deserved to take part in the election of the future prelate, which they desired. Having accepted the explanation that this had been done not from contempt of the Augustus but with a view to the future—namely, lest by a precedent of this kind the custom of waiting for the legates of princes in the election of Roman prelates should grow established—they calmed all their indignation from the heart and themselves also humbly approached to salute the elected man.

C. XXX. The election of the Roman Pontiff is conceded to the Romans by Louis.

Likewise the pact of the constitution of the first Emperor Louis with the Roman Pontiffs. I, Louis, Roman Emperor Augustus, enact and grant by this pact of our confirmation to you, Blessed Peter, prince of the apostles, and through you to your vicar, the lord Paschal, supreme Pontiff, and to his successors in perpetuity, as you and your predecessors have held and disposed in your power and dominion until now, the city of Rome with its duchy, all its suburbs and villages, its mountainous territories, seacoasts, and ports, and all the cities, castles, towns, and estates in the regions of Tuscany. The same: § 1. When, by divine calling, the Pontiff of this most sacred see has migrated from this world, let no one from our kingdom—whether Frank, Lombard, or a man of any nation placed under our power—have license to come against the Romans publicly or privately, or to make the election, and let no one presume to do any evil on this account in the cities or territories belonging to the power of the church of Blessed Peter the Apostle; but let the Romans be permitted, with all veneration and without any disturbance, to provide an honorable burial for their Pontiff, and canonically to consecrate, without any uncertainty or contradiction, the man whom all the Romans, by one counsel and concord, without any promise, shall have elected to the order of the pontificate through divine inspiration and the intercession of Blessed Peter. And when he has been consecrated, let legates be directed to us or to our successors, the kings of the Franks, to join friendship, charity, and peace between us and him.

[PALEA.

C. XXXI. The election and consecration of the Roman Pontiff ought to be made only justly and canonically.

Likewise Leo IV to the Augusti Lothar and Louis. It has been enacted and confirmed by the terms of the pact between us and you that the election and consecration of the future Roman Pontiff ought to be made only justly and canonically.]

[PALEA.

C. XXXII. No impediment to the election of the Roman Pontiff is to be created by the emperor or his envoys.

Likewise the Constitution of the first Henry and the first Otto with the Roman Pontiffs. Constitution of the first Henry and the first Otto with the Roman Pontiffs. We altogether forbid any of our envoys to dare contrive an argument for any kind of impediment in the election of the Roman Pontiff. Likewise: § 1. In the election of Roman Pontiffs, let neither free man nor slave presume to bring it about that he causes any impediment to those Romans whom ancient custom, through the constitution of the holy Fathers, admitted to this election.

But if anyone presumes to act against this our constitution, let him be delivered into exile.]

C. XXXIII. The oath of Otto, which he made to the lord Pope John.

Likewise the Constitution of Otto. To you, lord Pope John, I, King Otto, cause a promise and oath to be made by the Father and the Son and the Holy Spirit, and by this wood of the life-giving cross, and by these relics of the Saints, that if, with God's permission, I come to Rome, I shall exalt the holy Roman Church and you, its ruler, according to my ability, and never by my will, consent, counsel, or

exhortation shall you lose your life or limbs, or the very honor that you have; and at Rome I shall hold no judicial assembly or make any ordinance concerning any of the things that pertain to you or to the Romans without your counsel; and whatever of the land of Saint Peter shall come into our power, I shall restore to you. Whomever I entrust with the Italian kingdom, I shall cause him to swear that he will be your helper in defending the land of Saint Peter according to his ability.

C. XXXIV. Let the clergy and people be free to elect a bishop from their own diocese.

Likewise from the first book of the Capitularies of Charles and Louis, [Emperors, c. 84]. Not ignorant of the sacred canons, in order that in God's name the holy Church may more freely possess its honor, we furnish our assent to the ecclesiastical order, so that bishops, through the election of clergy and people, may be elected from their own diocese according to the statutes of the canons, with acceptance of persons and gifts removed, on account of merit of life and the gift of wisdom, so that they may be able in every way to benefit those subject to them by example and word. GRATIAN. From these constitutions and the pact of Emperor Louis, it is perceived that the emperors renounced those privileges concerning the election of the supreme Pontiff which Pope Adrian had granted Emperor Charles, and Pope Leo, in imitation of him, had granted Otto I, king of the Germans. Since, therefore, from the foregoing authorities it is clear to all that the election belongs to clerics alone, it is asked: to which clerics does the election itself belong—to those of the greater church alone, or also to other religious clerics who are in the same city? But—as is found in the abridgment of the canons by Fulgentius, deacon of the church of Carthage—it was enacted at the Seventh Council of Nicaea and the Council of Macerata that the judgment of the mother church suffices for electing a bishop. Now, however, just as the election of the supreme pontiff is to be made not only by the Cardinals but also by other religious clerics, by the authority of Pope Nicholas, so too the election of bishops is to be made not only by canons but also by other religious clerics, as was enacted in the general synod of Pope Innocent held at Rome. For he says:

C. XXXV. The canons of the greater church are not to elect a bishop without the counsel of religious men.

Indeed, when bishops die, since the sanctions of the holy Fathers forbid a church to be vacant beyond three months, under anathema we forbid the canons of the episcopal see to exclude religious men from the election of bishops; rather, with their counsel let them elect an upright and suitable person as bishop. But if an election has been made with the religious excluded, let what was done without their consent and acquiescence be regarded as null and void. GRATIAN. It is now therefore asked: if the votes of the electors divide into two parties, which of them is to be preferred to the other? Concerning these matters Bishop Leo writes as follows, [to Anastasius, Bishop of Thessalonica, epistle LXXXII, otherwise LXXXIV, c. 5]:

C. XXXVI. When the votes of the electors have divided into two parties, which is to be preferred to the other.

If perchance—which we judge neither reprehensible nor irreligious—the votes of the electors divide into two parties, let him be preferred to the other by the judgment of the metropolitan who is supported by greater zeal and merits, provided only that no one be given to those unwilling and not requesting him, lest an unwilling people contemn or hate an undesired bishop.

Distinction LXIV

GRATIAN. Part I. From here it is to be considered by whom or at what time holy orders are to be distributed, or in what places patriarchs, primates, archbishops, bishops, chorepiscopi, and the remaining priests are to be ordained. By whom bishops are to be ordained was defined at the Council of Nicaea, where it reads as follows, [c. 4]:

C. I. Bishops are to be ordained by all the comprovincial bishops.

Bishops ought to be ordained by all those who are in their province. But if this is difficult, either because of pressing necessity or the length of the journey, three bishops ought to assemble together, in such a way that they possess by letters the consent of the others who are absent. The authority, however, or confirmation will pertain in each province to the metropolitan bishop.

C. II. On the same.

Likewise Pope Anacletus, [to the Bishops of Italy, epistle II]. By apostolic authority, episcopal ordinations are to be celebrated by all the bishops who are in the same province. § 1. But if all have been wholly unable to assemble together, let them nevertheless furnish assent by their prayers, so that they are not absent in mind from the ordination itself.

[PALEA.

C. III. From the First Council of Orange, c. 21.

Concerning the rejection of one whom two bishops have presumed to ordain in our provinces, it has pleased us concerning the presumptuous persons that, wherever it happens that two bishops ordain a third, both he and the authors are to be condemned, so that those things instituted in antiquity may be observed more cautiously.]

C. IV. With the others assenting, a bishop is to be ordained by three comprovincial bishops.

Likewise Pope Anicius, [in the epistle to the Bishops of Gaul]. If it is necessary, comprovincial bishops, with the others consenting, may be consecrated by three bishops at the archbishop's command.

C. V. A bishop is not to be ordained without the metropolitan's knowledge.

Likewise Innocent, [Pope, to Victricius, Bishop of Rouen, epistle II, c. 1]. Let no one dare to ordain a bishop without the knowledge of the metropolitan. For a judgment that is confirmed by the opinions of many is complete. Nor let one bishop presume to ordain a bishop, lest a benefit bestowed by stealth seem to have been granted. For the Synod of Nicaea both enacted this and defined it by enactment.

C. VI. Bishops are to be consecrated by their metropolitan, and he by those same bishops.

Likewise Gelasius to all the bishops throughout Dardania. Part II. Because, through unlawful ambitions, certain persons are not ashamed to disturb the rights of churches and, with rash

presumption, to invade the privileges which antiquity decreed to metropolitan or provincial bishops —on account of which they also desire to maintain a breach of apostolic communion, so that, separated from its authority, they may exercise their own usurpations with impunity, not considering that they will have to render an account to the eternal Judge, both for the injury to catholic sincerity and for the prejudices done to paternal traditions, not without the destruction of perpetual condemnation if they persist in this obstinacy—we have thought your charity should be instructed that all of you in common, brothers established throughout Dardania or any contiguous province, who remember that you are under your metropolitans and who determine that bishops are to be substituted by those same men, as ancient custom demands, should unanimously strive to obtain bishops; and in turn, if a metropolitan departs by the lot of the human condition, you are to judge in every way that he is to be consecrated by the bishops of the province, as the form has handed down, and you are not to suffer him to claim for himself what was granted to you by ancient arrangement, so that, even amid the very storms of adverse wills, you may by no means cease to guard the ancient rules, just as there is no doubt that our fathers steadfastly did in the time of diverse persecutions.

C. VII. On the same.

Likewise from the Council of Pope Martin. Part III. A bishop ought most especially to be constituted by the entire council. But if this is difficult either because of necessity or the length of the journey, three are to be gathered from all, and the subscriptions of all present or absent are to be obtained, and thus afterward the ordination is to be made. § 1. The authority over this matter in every province, however, pertains to the metropolitan bishop.

C. VIII. He who has been ordained without the metropolitan's knowledge will not be a bishop.

Likewise from the Council of Nicaea, [I, c. 6]. This is generally clear: if anyone has been made bishop apart from the metropolitan's judgment, the great synod has defined that this man ought not to be a bishop.

Distinction LXV

GRATIAN. Part I. The consent of the comprovincial bishops is universally desired in the ordination of a bishop. But if some, led by animosity, wish to contradict, let the judgment of the greater number prevail. Hence in the Council of Nicaea, [c. 6]:

C. I. If, while the others consent to the ordination of bishops, two or three contradict, let the judgment of the greater number prevail.

Indeed, if, when the common consent of all has been reasonably proved according to the ecclesiastical rule, two or three, led by animosity, contradict contentiously, let the judgment of the greater number of priests prevail.

C. II. On the same.

Likewise from the Council of Pope Martin. A bishop ought not to be ordained without the counsel and presence of the metropolitan bishop. All the priests who are in the province ought to be present, and the metropolitan ought to summon them by his letter. And indeed, if all come, it is well; but if

this is difficult, the greater number ought to come. Those who do not assemble, however, are to make their presence known through their letters, and thus, when the consent of all has been given, the ordination of the bishop ought to be made. But if it is done otherwise than was determined by us, we decree that such an ordination has no validity. Part II. § 1. But if the ordination of a bishop has been made according to the canons and someone with his malice contradicts it in some respect, let the consent of the greater number prevail.

C. III. On the same.

Likewise from the Council of Antioch, [c. 19]. A bishop is not to be ordained without the counsel and presence of the metropolitan bishop; it will be better for him if the bishops assemble from the whole province. But if this cannot be done, let those who cannot be present indicate by their own letters their consent concerning the man, and then at last, after the consent of the greater number, whether through presence or through letters, let him be ordained by a concordant judgment. But if it is done otherwise than has been enacted, let an ordination of this kind have no validity. § 1. But if an ordination is celebrated even according to the defined rules, while some contradict because of their own private enmities, let the judgment of the greater number concerning him prevail, with those men disregarded. GRATIAN. But if it is established that a province has a primate, it will not be permissible even for the metropolitan to consecrate a bishop without his knowledge. Hence Pope Leo of the city of Rome to Bishop Anastasius, [epistle LXXXII, otherwise LXXXIV, c. 6]:

C. IV. The metropolitan is not to ordain a bishop without the primate's consent.

Concerning the person of the bishop to be consecrated, and the consent of the clergy and people, let the metropolitan bishop report to your fraternity, and let him make known to you what has found good pleasure in the province, so that your authority too may confirm the ordination that is duly to be celebrated. This authority ought to bring no delay or difficulty to proper arrangements, lest the care of pastors be long absent from the Lord's flocks.

C. V. On the same.

Likewise from the Third Council of Carthage, [c. 12]. It pleases all that, without consulting the primate of the province in question, no one is to presume so readily, even with many others, to ordain a bishop in any place without his precept, as was said. § 1. But if necessity exists, three bishops, wherever they may be, ought to ordain a bishop with the primate's precept.

C. VI. Its proper honor is to be preserved for each church.

Likewise from the Council of Nicaea, [c. 6]. Let the ancient custom endure in Egypt, Libya, and Pentapolis, so that the Bishop of Alexandria may have authority over all these, since indeed a parallel custom exists for the Bishop of Rome. § 1. Similarly, at Antioch and throughout the other provinces, let its own honor be preserved for each church.

C. VII. On the same.

Likewise from the same, [c. 7]. Since ancient custom and venerable tradition have prevailed that honor be deferred to the bishop of Aelia, that is, Jerusalem, let him accordingly have honor, while the proper dignity of the metropolitan city nevertheless remains. GRATIAN. But one who has been

ordained by his comprovincial bishops with the metropolitan's permission is to present himself before him within the established times. Hence it reads in the Council of Tarragona, [c. 5]:

C. VIII. On the same.

If a bishop has not been ordained in the metropolitan city, after he has received the blessing and obtained the episcopal honor through letters of the metropolitan, we have decreed it to be best that afterward, at the established time—that is, when two months have been completed—he present himself before his metropolitan, so that, having been instructed by him in ecclesiastical admonitions, he may recognize more fully what he ought to observe. But if perchance he neglects to fulfill this, let him be rebuked and corrected by the brothers in the synod. And if he has been prevented by some illness from fulfilling it, let him take care to indicate this to the metropolitan by his letters. Part III. GRATIAN. By these authorities it is given to be understood that bishops ought to be ordained by their comprovincial bishops. But it is asked: if there are many bishops in a province and it happens that one bishop alone remains, what ought to be done? Because he is alone, he cannot ordain a bishop; he has no comprovincial bishops with whom he may consecrate a bishop. Therefore, when such necessity exists, what is to be done is defined in the Council of Sardica, where it reads as enacted as follows, [c. 5]:

C. IX. If only one bishop remains in a province, bishops from a neighboring province are to be summoned for the consecration of a bishop.

If perchance it happens that only one bishop remains in a province, let the surviving bishop summon bishops from a neighboring province and with them ordain bishops as his comprovincials. But if he neglects to do this, let the peoples approach the bishops of a neighboring province, and let those bishops first admonish the bishop who dwells in that province, and let them show that the peoples request a ruler for themselves and teach that it is just that he himself come and with them ordain a bishop. But if, after being approached by letters, he remains silent and dissimulates and writes nothing in reply, then the peoples are to be satisfied, so that bishops may come from a neighboring province and ordain a bishop.

Distinction LXVI

GRATIAN. Part I. Archbishops, however, ought to be ordained by all the bishops of their province. Hence Pope Anicius says, [in the epistle to the Bishops of Gaul]:

C. I. An archbishop is to be ordained by all the suffragan bishops.

Let an archbishop be ordained by all the bishops of his province. § 1. What has been commanded concerning the consecration of an archbishop—that all the suffragans ordain him—may in no way be changed, because the one who presides over all the bishops over whom he presides ought to be constituted by them all. But if it has been presumed otherwise, there is no doubt that it lacks force, because the ordination transacted otherwise will be void. Part II. GRATIAN. Concerning bishops not to be ordained by fewer than three bishops, Anacletus writes, [epistle II to the Bishops of Italy], saying:

[C. II.]

Moreover, Blessed James, the first archbishop of Jerusalem, who was called the Just and was named the Lord's brother according to the flesh, was ordained by the apostles Peter, James, and John; they plainly gave a form to their successors that in no way is a bishop to be ordained by fewer than three bishops, with all the others furnishing assent, and that the ordination is to be celebrated by a common vote.

Distinction LXVII

GRATIAN. Part I. Priests and chorepiscopi, however, can be ordained by one bishop. Hence Anacletus, [epistle II to the Bishops of Italy]:

C. I. Priests can be ordained by one bishop.

Let the remaining priests be ordained by their own bishop, in such a way that the citizens and other priests furnish assent and celebrate the ordination while fasting. Let deacons be ordained similarly. But for the distribution of the other grades, the testimony of three truthful men, with the bishop's approval, can suffice. Likewise it reads in the Second Council of Seville, [c. 6]:

C. II. On the same.

Part II. A bishop alone can give the honor to priests and ministers; he cannot take it away alone.

Distinction LXVIII

GRATIAN. Part I. It is asked concerning those who are ordained by men not established to have been bishops, whether they are to be consecrated again or not. That they are not to be consecrated is proved by the authority of Gregory, who, writing to John, Bishop of Ravenna, [book II, epistle 32], says:

C. I. One who has once been consecrated ought not to be consecrated again.

Just as one who has once been baptized ought not to be baptized again, so one who has once been consecrated cannot be consecrated again. But if anyone came to the priesthood with a slight fault, penance ought to be imposed for the fault, and yet the order is to be preserved. To the contrary, the same Gregory testifies, writing to a certain bishop:

C. II. Concerning priests who are ordained by men established not to have been bishops.

As for the priests whom you found: if those men by whom they are ordained are unknown, and it is doubtful whether those who ordained them were bishops or not, then, if the priests themselves are men of good conduct and catholic, and are instructed in the ministry of Christ and in every holy law, let them receive the blessing of the priesthood from their bishop and be consecrated, and thus let them discharge the sacred ministry. GRATIAN. Therefore, the prohibition against a consecrated person being consecrated again in the same order is to be understood of one who was consecrated by a man whom it was certain had the right of consecrating. But one who is consecrated by a man not

established to have had the right of consecrating is to be consecrated again, because if that man did not have the right of consecrating, the present man received nothing of consecration from the outpouring of oil. And because he was not consecrated in that order, now, coming to consecration as though for the first time, he obtains the priestly blessing and consecration from the bishop. But if the man did have the right of consecrating, in the first anointing he obtained consecration; in the second consecration is not repeated, but only the anointing, just as one concerning whom it is doubtful whether he has been baptized or not ought to be baptized. If he had not been baptized before, he obtains the grace of baptism; but if he had been baptized, he receives nothing in the second anointing, nor does this pertain to a repetition of baptism, but to the safeguarding of salvation. This is likewise to be observed concerning churches to be consecrated. Hence in the Council of Nicaea:

C. III. A church once consecrated ought not to be consecrated again.

Consecration ought not to be applied again to churches once consecrated to God unless they have been burned by fire or polluted by the shedding of blood or by the seed of anyone; because, just as an infant once baptized by any priest in the name of the Father and of the Son and of the Holy Spirit ought not to be baptized again, so too a place dedicated to God is not to be consecrated again, except for those causes that we named above, provided nevertheless that those who consecrated it held the faith of the Holy Trinity. Part II. GRATIAN. Between bishops and chorepiscopi, however, there is this difference: bishops can be ordained only in cities, while chorepiscopi can also be ordained in villages. Bishops grant canonical letters, while chorepiscopi can give only commendatory and pacific letters. Bishops have the right of consecrating; chorepiscopi confer only the lesser orders, but they cannot furnish the Levitical and priestly blessing. Bishop Leo writes as follows concerning them to all the Bishops, [epistle LXXXVI, otherwise LXXXVIII]:

C. IV. In what respects chorepiscopi differ from bishops.

Although chorepiscopi and priests share with bishops the dispensation of many ministries, nevertheless let them know that certain things are prohibited to them, such as the consecration of priests, deacons, and virgins; the establishment, blessing, or anointing of an altar. Indeed, it is not permissible for them to erect altars or consecrate churches, nor through the imposition of hands to impart the Paraclete, the Holy Spirit, to baptized faithful or converted heretics, nor to prepare chrism, nor to sign with chrism the foreheads of the baptized, nor publicly at mass to reconcile anyone doing penance, nor to send canonical letters to anyone. [PALEA. For all these things are unlawful for chorepiscopi, who are known to correspond to the example and form of the seventy-two disciples, or for priests, who bear the same figure.] For although they have consecration, they nevertheless do not have the summit of the pontificate. Part III. GRATIAN. But these men, because of their insolence by which they usurped the offices of bishops for themselves, are today prohibited by the Church. Hence Pope Damasus says, [to the Bishops of Africa, epistle V]:

C. V. The order of chorepiscopi is rejected by the holy see.

Chorepiscopi are prohibited both by this holy see and by the bishops of the whole world. For their institution is exceedingly dishonorable and exceedingly depraved, because it lacks all authority for them to presume anything from the ministry of the supreme priest. § 1. For we have learned that there are no more than two orders among the disciples of the Lord, namely, the twelve apostles and

the seventy-two disciples. Whence this third has proceeded, we do not know. And what lacks reason must be rooted out. Part IV. § 2. But that those who were ordained by fewer than three bishops are not bishops is plain to all. For it was prohibited by the holy Fathers that those who were ordained by one or two bishops be called bishops. If they do not have the name, how will they have the office? Likewise Urban, [Pope II]:

C. VI. Bishops hold the place of the apostles in the Church.

Whose vicars bishops are in the Church, and who ought to give them this dignity, Saint Augustine shows, saying:

"In place of your fathers, sons have been born to you. The fathers who were sent are the apostles; in place of the apostles sons were born and were constituted bishops. For whence were the bishops who are throughout the whole world born today? The Church herself calls those men fathers; she herself begot them, and she herself established them in the seats of the fathers. Therefore do not think yourself deserted because you do not see Paul, because you do not see Peter, because you do not see those through whom you were born: from your offspring fatherhood has grown for you. In place of your fathers, sons have been born to you; you will constitute them princes over all the earth. The Church begot sons; she established them as princes in place of her fathers over all the earth."

Distinction LXIX

GRATIAN. Part III. A cleric's tonsure, however, can be received from the hand of an abbot, if it is known that the imposition of hands was made upon that abbot by a bishop. Hence it reads in the Seventh Synod, [c. 14]:

C. I. Abbots upon whom hands are imposed by bishops can tonsure certain persons.

Since we see many receiving the cleric's tonsure from a tender age without the imposition of hands, and, though they have not yet received the imposition of hands from a bishop, irregularly reading from the ambo in the assembly, we command that from now on this is by no means to be done. The same thing is also to be observed among monks. Part II. § 1. Every abbot, however, has license to make a reader by imposition of hands only in his own monastery, provided that it is known that the imposition of hands was made upon that abbot by a bishop according to the custom for appointing abbots, so long as it is established that he is a priest. § 2. In like manner, according to ancient custom, a chorepiscopus ought to promote readers by the bishop's precept.

C. II. Those who have not been advanced by the bishop are not to exorcize.

Likewise from the Council of Laodicea, [c. 26]. Those who have not yet been advanced by bishops ought not to exorcize, either in churches or in houses.

Distinction LXX

GRATIAN. A cleric cannot be ordained by bishops of another city, nor even is he to be ordained absolutely by his own bishop. Absolute ordination is prohibited by the Council of Chalcedon and is commanded to have a void imposition of hands; there it was enacted as follows, [canon 6]:

C. I. No one is to be ordained absolutely.

We command that no one be ordained absolutely as priest or deacon, nor anyone constituted in an ecclesiastical order, unless the one who is ordained manifestly earns the designation of a public appointment in a church of a city or an estate, or at a martyr's shrine, or in a monastery. Concerning those who are ordained absolutely, however, the holy synod has decreed that they have a void imposition of hands and that no such act has validity, to the injury of the very man who ordained him.

C. II. An ordination made without a title is to be void.

Likewise from the synod of Urban [II] held at Piacenza, [c. 15]. Enacting things consonant with the statutes of the holy canons, we decree that an ordination made without a title is to be regarded as void, and that in whatever church a man is given a title, he is to persevere in it perpetually. § 1. It is altogether impermissible, however, for anyone to be given a title in two churches, but let each man be regarded as a canon only in the church in which he is enrolled. For although by a bishop's arrangement one person can preside over diverse churches, he nevertheless ought not to be a prebendary canon except of the one church in which he is enrolled. § 1. If, however, there are chapels that cannot support clerics from their own revenues, let the care and arrangement of them fall to the provost of the greater church to which the chapels appear to be subject, and let him provide both for the possessions and for the ecclesiastical offices of the chapels. GRATIAN. At the same council a tenth preface was also added to the ancient nine, which reads thus: "It is right and salutary, she who conceived your only-begotten Son by the overshadowing of the Holy Spirit, and, the glory of virginity remaining, poured forth the eternal light upon the world, Jesus Christ our Lord."

Distinction LXXI

GRATIAN. Concerning clerics not to be ordained by a bishop of another city, it was enacted in the Council of Sardica, [cc. 18 and 19], where Bishop Januarius is read to have said:

C. I. Clerics are not to be ordained by a bishop of another city.

Let your holiness also enact this: that no bishop be permitted to solicit an ecclesiastic of another city and ordain him as a cleric in his own diocese. For discords are accustomed to arise from these contentions; and therefore let the judgment of all prohibit anyone from daring to do this. § 1. Bishop Hosius said: And we all enact this also: that whoever wishes to ordain a minister belonging to another parish without the consent and will of that minister's bishop, his ordination is not to be valid.

C. II. On the same.

Likewise Innocent, [to Victricius, Bishop of Rouen, epistle II, c. 7]. Let no one presume to ordain a cleric from another church unless that cleric's bishop, having been entreated by prayers, is willing to grant him.

C. III. If one is ordained without the consent of his own bishop, let his ordination be void.

Likewise from the Council of Nicaea, [c. 16, at the end]. If anyone shall dare to ordain in a church someone who belongs to another, when he does not have the consent of the bishop from whom the cleric withdrew, let such an ordination be void.

C. IV. A cleric of one church is not to be ordained in another.

Likewise from the Council of Chalcedon, [c. 20]. It is not permissible for clerics established in individual churches, as we have already defined, to be ordained in the churches of another city; rather, let them remain in the one in which they first earned the right to minister, excepting those who have lost their own cities and by necessity have migrated to other churches. But if any bishop, after this definition, receives a cleric belonging to another bishop, it has pleased the holy synod that both the one who received and the one received are to remain excommunicated until the cleric himself returns to his own church.

C. V. With apostolic permission, a cleric of one church can be ordained in another.

Likewise Gregory to Fortunatus, Bishop of Naples, [book V, epistle 11]. We recall that your fraternity requested of us that we grant Gratian, deacon of the church of Enafrenum, to be ordained for your church. And since his own church has no bishop whom he ought to obey—the enemy, namely, preventing him from rendering his ministry where he ought—we did not foresee that your petition should be deferred. Therefore, by these present writings we have thought it necessary to grant him to you, so that, with our authority intervening, you will have license, with God's favor, to establish that deacon as a cardinal cleric of your church.

C. VI. A cleric is not to be received in any church without letters from his bishop.

Likewise from the Council of Carthage, [c. 5]. Primatus, Bishop of Begesela, said: I suggest to your holiness that you enact that it is not permissible for another's cleric to be received by anyone without letters from his bishop, or to be retained with him, or for a layman to usurp for himself someone from another people so that he may possess him without the knowledge of the bishop from whose people he is. Bishop Gratus said: This observance guards peace; for I remember that it was similarly enacted at the most holy Council of Sardica that no one usurp a man of another people; but if perchance he is needed, let him request the man from his colleague and have him through the consent of his bishop.

C. VII. A cleric is not to minister outside his own church without commendatory letters.

Likewise from the Council of Chalcedon, [c. 13]. It is wholly impermissible for a foreign cleric or reader to minister anywhere outside his own city without commendatory letters from his own bishop.

C. VIII. On the same.

Likewise from a sermon of Saint Augustine to the people. We exhort your Christian devotion that, according to the institutes of the holy canons, a priest coming from elsewhere not be received in churches founded by you unless he was consecrated by the bishop of your church or is received by him through commendatory letters.

C. IX. Pilgrim clerics are not to be received without a canonical letter.

Likewise from the Council of Antioch, [c. 7]. No one ought to receive pilgrim clerics without a *formata*, which the Greeks call an epistle.

Distinction LXXII

GRATIAN. A bishop, however, is to grant dimissory letters only when requested, as was enacted in the Synod held at Rome.

C. I. Dimissory letters are not to be furnished to anyone unless he himself requests them.

Let a bishop not make dimissory letters for a priest subject to him or another cleric unless requested by that very man, lest the sheep be found as though lost or wandering.

C. II. On the same.

Likewise from the Third Council of Carthage, [c. 21]. Let no one dare either to retain another's cleric, unless his bishop grants him, or to promote him in the church entrusted to himself. Readers, psalmists, and doorkeepers also retain the name of clerics.

C. III. One ordained in one church is not to be received in another.

Likewise from the Council of Milevis, [II, c. 15]. It has pleased us that whoever is elected even once in a church is not to be held for the clerical state by another church.

[PALEA.

Distinction LXXIII

GRATIAN. It is to be seen how a commendatory, dimissory, or canonical epistle is to be made. For Greek letters ought to be inserted in that epistle, and not without cause. No one who has even a slight knowledge of the Greek language is ignorant that the elements of Greek letters also express numbers. Therefore, lest any fraud of falsity be rashly presumed in making canonical epistles, which Latin custom calls *formatae*, it was most salutarily devised and enacted by the 318 Fathers assembled at Nicaea that canonical epistles have the following method of calculation or computation: namely, that there be taken into the computation the first Greek elements of Father, Son, and Holy Spirit, that is, PI, GAMMA, ALPHA, which elements signify the numbers eighty, four hundred, and one. Also the first letter of the apostle Peter, that is, PI, which signifies the number eighty; also the first letter of the bishop who writes, the second letter of the one to whom it is written, the third letter of the one receiving it, the fourth letter of the city from which it is written, and the number of whatever indiction pertains to that time are to be taken. And thus, when all these Greek letters, which, as we

have said, express numbers, have been brought together into one, let the epistle contain the one total, whatever has been collected; let the one who receives it inquire after this expressly with every caution. In addition, let him add separately in the epistle the ninety-ninth number also, which it signifies according to the Greek elements.

C. I. A specimen of the canonical epistle that was made by the 318 Fathers in the Synod of Nicaea.

In the name of the Father, PI, and of the Son, GAMMA, and of the Holy Spirit, ALPHA. PI. To Walter, Bishop of Speyer: I, Burchard, devoted servant of Christ's flock of the holy church of Worms, wish in the true God the blessedness of supreme felicity. Although the holy catholic Church is ready to follow the evangelical teachings which say, "He who receives a prophet in the name of a prophet shall receive a prophet's reward, and he who receives a just man in the name of a just man shall receive a just man's reward, etc.," and the Apostle commands that hospitality be pursued and that one share in the necessities of holy men; nevertheless, because of those who have a seared conscience, who say that they are simple although they are filled with diabolical cunning, and who say that they pass from place to place for a work of piety although they are fugitives through the action of their own malice, and who say that they have been inserted into the sacred ministry although they have not, it was enacted by the holy Fathers that no foreign and unknown cleric is to be received by any bishop and enthroned in his church unless he has from his own bishop an epistle which in the canons is called a *formata*. Therefore we make known to your fraternity that our present brother, the bearer of these letters, named Hermann, was not expelled from us for his wickedness, but, at the brothers' request, because he was of our household and was baptized as ours, we made him a free man, his manumission received canonically at the horn of the altar, and ordained him to the grade of the priesthood. For him we also make these dimissory or commendatory letters and direct him to your beloved fraternity, so that he may be able to remain in your parish under your sacred governance and defense. I, I say, Burchard, humble bishop, in the name of the Father and of the Son and of the Holy Spirit, and in the unity of the holy Church, in which the right of binding and loosing was given to Peter, release the priest Hermann from the city of Worms in indiction X, and I give you license to enthrone him in whatever church of your parish you wish. We therefore have decreed that this epistle be fortified here and there with Greek letters, and have judged that it be confirmed with the ring of our church. May Christ preserve your fraternity unharmed for us. PI. GAMMA. ALPHA. PI. BETA. ETA. ZETA. AMEN. Given at Worms on the Ides of March, in the year 1012 of the Lord's incarnation, indiction X.

C. II. Here begins a canonical epistle issued by the 318 Bishops and by Atticus, Bishop of the city of Constantinople:

To the most holy brother in Christ, to be embraced with the highest sweetness of charity, ALPHA, bishop of that city: GAMMA, prelate of that church, wishes perpetual health in Christ. OMEGA. GAMMA. ALPHA. OMEGA. For the rest, let your holy fraternity know that this cleric, Hermann by name, instructed and tonsured in our parish, requested our littleness that we draw up for him commendatory letters by which, commended to your highness, he could dwell under the protection of your governance. Consenting to his will, according to canonical authority we gave him dimissory letters, through which we both grant him that, persisting in divine service under your teaching, he may serve his own benefit, and give you license, if you judge him worthy, to promote him to sacred

orders. Therefore receive him commended to your care, and guard him—released from our territory—among the number of your sheep. In order that these letters, confirmed by the force of truth, may be received by you without doubt, we have taken care to confirm them with Greek letters, as canonical authority teaches. May the Holy Trinity grant that your blessedness long fare well for the governance of his holy Church, AMEN. (Or thus: ETA. THETA (which express the same total), indiction X. This canonical epistle contains a total of the number 1,315. We place the Greek GAMMA first in the name of that man because the Greeks in some places put it for the consonantal GAMMA, as in DAVID and EVANGELION.)]

Distinction LXXIV

GRATIAN. Part I. It is asked concerning those who scorn to be promoted by their bishops, whether they are to be elevated unwillingly or not. Concerning them it is found to have been enacted as follows in the Third Council of Orléans, [c. 7]:

C. I. A bishop who presumes to ordain an unwilling man is to be subject to suspension for a year.

A bishop who presumes to ordain one who is unwilling or protests, being subjected to a year's penance, is not to presume to celebrate masses.

C. II. No one is to be promoted unwillingly.

Likewise Gregory to Bishop Natalis, [of Salona, in book I of the *Register*, epistle 19]. We have learned that the records which you sent us, drawn up in the council's registry, in which Archdeacon Honoratus is implicated, are full of the seed of quarrels, since at one and the same time a single person, unwilling, is advanced to the order of the priesthood, while he is removed from the office of the diaconate as though unworthy. And just as it is just that no one be compelled to rise unwillingly, so I think it must be judged that no innocent person be cast down unjustly from the ministry of his order. To the contrary it is found in the Council of Carthage, [c. 31]:

C. III. Those who scorn to be promoted by their bishops are to be cast down from their place.

If any clerics have scorned to be promoted by their bishops, let them not remain there from which they refused to depart.

C. IV. Likewise on the same.

It has pleased us that any clerics or deacons who, because of the necessities of ecclesiastical affairs, have not obeyed their bishops wishing to promote them to a higher honor in their church, are not to minister there in their own grade, from which they refused to depart.

C. V. Later bishops are not to be set before earlier ones.

Likewise from the Council of Agde, [c. 23]. Let no one set a later bishop before an earlier one among bishops whose life is not reproved, unless perhaps, lifted up by pride, he scorns to fulfill what the bishop commanded for the necessity of the Church. Part II. § 1. Certainly, if because of a simpler

nature he is unable to fulfill or discharge the office of the archdiaconate, let the one whom the bishop has elected to be set above him hold the name of his place and the ordering of the church.

C. VI. A person ought not to be held unwillingly in the place in which he was ordained.

Likewise Gregory to John, Bishop of Syracuse, [book XI, epistle 34]. By the report of certain persons it has reached us that Cosmas—who, from being a monk of the monastery of Saint Lucy, was made a subdeacon in the church of Syracuse by your predecessor Maximian of venerable memory, and is afterward said to have been ordained by you as a priest on the estate called Juliana—is so vehemently afflicted by excessive sadness and by the character of the place that he regards his life as a punishment and seeks the aid of flight for his contrition. And therefore, because we ought to show ourselves toward our subjects as we, if we had been subjects, would wish our prelates to be toward us, it is an act of great kindness if your holiness takes care to bring him back to the church where he discharged the office of the subdiaconate and to establish him there as a cardinal cleric. And, as far as we judge, you ought to do this if there is nothing that justly exasperates your mind against him. But if there is some fault, let your fraternity make this known to us by your letters, so that we may be able to know it. Part III. GRATIAN. But that text of Gregory is to be understood of those who, not from a cause of necessity but from a cause of ingratitude, cunningly seek to be promoted by their bishops. The text of the Council of Carthage, however, is to be understood of those who are unwilling to obey their bishops when, because of the necessity of the Church, they wish to promote them to higher things. Anyone can corroborate this distinction from the decree of Pope Simplicius, who, writing to John, Archbishop of Ravenna, [epistle II], says among other things:

C. VII. No one is to be dragged unwillingly to the episcopate.

Where did you learn those things which you perpetrated against Gregory, our bishop and fellow brother, not from affection but from envy? You suffered him to be dragged before you with inexcusable violence and to be harassed, so that you imposed so great an honor upon him not through tranquility of mind but through madness, as it must be said. For such things could not have been done with soundness of counsel. We are unwilling to aggravate what was done, lest we be compelled to judge what is deserved; for one who abuses the power permitted to him deserves to lose his privilege. But we give notice that, if after these things you presume something of this kind and perchance believe that you can make anyone a bishop, priest, or deacon against his will, know that the ordinations of the church of Ravenna or of Emilia are to be taken away from you.

C. VIII. On the same.

Likewise Gregory to Antoninus the Subdeacon, [book II, epistle 16, indiction 10]. Honoratus, archdeacon of the church of Salona, had requested by a supplication sent to my predecessor of holy memory that he in no way be compelled by his bishop, against custom and unwillingly, to be promoted to the order of a higher grade. For he declared that this was being done to him not for the sake of advancement but because of ill will. For this reason our predecessor of holy memory had even then forbidden by his writings Natalis, our brother and fellow bishop, to promote the aforesaid Archdeacon Honoratus unwillingly or to retain in his heart the pain of the ill will he had conceived. And when these same things had also been most earnestly forbidden by me, he, not only neglecting God's commands but also contemning our writings, attempted cunningly to degrade the aforesaid

archdeacon under the guise of promoting him to a higher honor. Hence it was brought about that, when the latter had been removed from the place of the archdiaconate, he brought in another who could comply with his conduct. We judge that this Archdeacon Honoratus cannot be displeasing to his bishop for any other reason than that he prohibited him from giving sacred vessels to his relatives. Both my predecessor of holy memory then and I now wished to investigate this cause with subtle inquiry, but, conscious of himself and his deeds, he deferred sending his person to judgment. Hence we have thought your experience should be strengthened by the authority of the present precept, so that, coming to Salona, it may take care to exhort Natalis, our brother and fellow bishop, admonished by at least so many writings, to receive the above-mentioned archdeacon in his status. But if, as is his custom, he should perhaps contumaciously defer doing this, you shall, by authority of the apostolic see, forbid him the use of the pallium which had been granted him by this see. If you perceive that even after losing the pallium he still perseveres in the same obstinacy, you shall deprive that bishop of participation in the Lord's body and blood. GRATIAN. Discipline is also to be applied by which those unwilling to be promoted to sacred orders are impelled to obey their bishops. For those constituted in the lesser orders are to be promoted gradually through the individual grades, so that those who scorn to obey their bishops may grieve that men whom they formerly had as subjects have been set above them. Hence Gelasius writes to Bishop Victor:

C. IX. When those in the greater orders have scorned to be ordained, men are to be promoted from the lesser orders.

Your affection has consulted us concerning the promotion of its clerics, declaring that the deacons refuse to come to the grade of the priesthood, of which you recall your church to be in need.

Therefore, because ecclesiastical moderation and gravity do not permit men to be made against their will, that ordination can be effected so as to make willing men from the unwilling if you take care to promote to the priesthood those whom you have among the acolytes or subdeacons who are more mature in age and whose life is approved, so that those who were unwilling to advance among their own may be rendered later than their inferiors among the lesser men. Let these men obtain the advantages of a priest more abundantly than the deacons, so that, constrained at least by this reason, the latter may strive to seek both the honor which they had fled and its gain.

Distinction LXXV

GRATIAN. Part I. According to what is contained in the Roman Order, no particular time of consecration is chosen for the blessing of a bishop. For they are blessed at every time, provided that they receive the blessing while fasting and at the third hour. Hence Anacletus, Bishop of the city of Rome, writes to all the Bishops, [epistle II, at the beginning]:

C. I. At what hour the ordinations of bishops ought to be made.

By apostolic authority the ordinations of bishops are to be celebrated by all the bishops who are in the same province. Assembling together, let them celebrate the scrutiny with prayers, imposing hands with the holy Gospels, praying on the Lord's day at the third hour, and anointing them with sacred anointing in the manner of the apostles and Moses, after the example of the prophets who anointed the heads of kings; because all sanctification is established to be in the Holy Spirit, whose invisible power is mingled with the holy chrism. And by this rite let them celebrate the solemn

ordination. Part II. GRATIAN. The time of consecration, however, is confined within the space of three months, beyond which, unless necessity compels, the consecrations of bishops may not be deferred after election. Hence it reads in the Council of Chalcedon, [c. 25]:

C. II. The ordination of bishops is not to be deferred beyond three months.

Since certain metropolitans, as has been reported to us, neglect the flocks entrusted to them and defer making the ordinations of bishops, it has pleased the holy synod that the ordinations of bishops be made within three months, unless perhaps an inexcusable necessity compels the time of ordination to be prolonged further. But if any bishop does not observe this, we judge that he ought to be subject to ecclesiastical condemnation, while the revenues of the same widowed church are to be preserved intact with the steward of that church. Part III. GRATIAN. The ordinations of the others, however, especially of priests and Levites, ought to be made only at certain times and days, namely on Saturday evening or on the morning of the Lord's day, with the fast continued. Hence Zephyrinus, Archbishop of the city of Rome, writes to all the Bishops, [epistle II]:

C. III. At what hour priests and Levites are to be ordained.

Perform the ordinations of priests and Levites solemnly at a suitable time, with many standing by in their presence, and promote approved and learned men to this work, so that you may rejoice greatly in their fellowship and assistance.

C. IV. On the same.

Likewise Bishop Leo to Dioscorus, Bishop of Alexandria, [epistle LXXIX, c. 1]. What we know to have been observed by our Fathers with more attentive care, we also wish to be guarded by us: that priestly or Levitical ordination not be celebrated indiscriminately on every day, but that the beginnings of consecration be chosen after the Sabbath day and its night, which dawns upon the first day of the week, in which the sacred blessing is to be conferred upon those to be consecrated while they are fasting and by those who are fasting. It will belong to the same observance if the ordination is celebrated in the morning on the Lord's day itself, with the Sabbath fast continued, since it does not depart from the beginnings of the preceding night, which without doubt pertain to the day of the resurrection, as is also declared in the Lord's Pasch.

C. V. Why ordinations of priests are celebrated on the Lord's day.

Likewise, [in the same chapter]. Part IV. That ordinations of priests are celebrated on the Lord's day, we know to come not only from custom but also from apostolic teaching, Scripture making manifest that, when the apostles sent Paul and Barnabas at the command of the Holy Spirit to preach the Gospel to the gentiles, they imposed hands upon them while fasting and praying, so that we may understand with how great a devotion both of those giving and of those receiving care must be taken lest the sacrament of so great a blessing appear to have been fulfilled negligently. And therefore you will have piously and laudably complied with the apostolic institutes if you yourself also preserve this form of ordaining priests throughout the churches over which the Lord willed you to preside, so that the blessing is never granted to those to be consecrated except on the day of the Lord's resurrection, to which it is established that the beginning is assigned from the evening of the Sabbath, a day consecrated by so many mysteries of the divine dispensations that whatever distinguished thing was

instituted by the Lord was accomplished in the dignity of this day. On it the world took its beginning; on it, through the resurrection, both death received its destruction and life its beginning.

[PALEA.

C. VI. On the same.

Likewise in the Roman Order, in the chapter concerning the grades of the Church. Clerics are ordained up to the office of the subdiaconate whenever and wherever it pleases, but deacons and priests never except in a public ordination.]

C. VII. Concerning the times of ordination.

Likewise Gelasius to all the Bishops, [epistle I, c. 13]. Part V. The ordinations of priests and deacons ought not to be performed except at certain times and days, that is, at the fast of the fourth month, the seventh, and the tenth, but also at the beginning of Lent and the middle week, on the Sabbath fast toward evening. Let them know that the ordinations themselves are to be celebrated then, and let them not dare, for the sake of any advantage, to prefer either a priest or a deacon to those who were ordained before them.

Distinction LXXVI

GRATIAN. Part I. At what times fasts are to be celebrated Pope Callistus determines, writing to Bishop Benedict, [epistle I]:

C. I. At what times the fasts are to be celebrated.

We now decree that the fast which you learned was celebrated among us three times in the year is more fittingly to be held at four seasons, so that, just as the year revolves through four seasons, so we too may perform the solemn fourfold fast through the four seasons of the year.

C. II. On the same.

Likewise from the Council of Mainz, [I, c. 34]. We enact that the four seasons of the year be observed by all persons with fasting, that is, in March, the first week; in June, the second; in September, the third; and in December, the fourth.

C. III. On the same.

Likewise from the Council held at Seligenstadt, [c. 2]. Concerning the fast of the four seasons, we establish this certainty: if the Kalends of March occur on Wednesday or earlier, let the fast be celebrated in that same week. § 1. But if the Kalends of March extend to Thursday, Friday, or Saturday, let the fast be deferred to the following week. In like manner also, if the Kalends of June occur on Wednesday or earlier, let the fast be celebrated in the following week; and if they occur on Thursday, Friday, or Saturday, let the fast be reserved for the third week. § 2. And this is to be known: if at any time, according to the aforesaid rule, the fast of the month of June occurs on the vigil of Pentecost, it is not to be celebrated there, but in the solemn week of Pentecost itself, because a vigil and a fast ought not to be celebrated together. Even then, because of the solemnity of the Holy Spirit, let the deacons be clothed in dalmatics, let "Alleluia" be sung, and let "Let us bend the knees" not be

said. § 3. It has been enacted in the same manner concerning the fast of the seventh month that, if the Kalends of September occur on Wednesday or earlier, let the fast be celebrated in the third week; and if they occur on Thursday, Friday, or Saturday, fasting is to take place in the fourth week. § 4. In December, however, this is to be observed: that the fast be celebrated on the Saturday immediately before the vigil of the Lord's Nativity, because if the vigil occurs on a Saturday, it is not fitting that the vigil and the fast be celebrated together. To the contrary, Urban, [II, in the Council of Piacenza, c. 14]:

C. IV. On the same.

We also enact that the fasts of the four seasons be celebrated in this order: let the first fast take place at the beginning of Lent, the second in the week of Pentecost, and the third and fourth in September and December in the customary manner.

C. V. On the same.

Likewise from a sermon of Pope Leo, [I, sermon I on the fast of Pentecost]. Therefore, after the days of holy gladness which we have passed in honor of the Lord rising from the dead and then ascending into heaven, and after the gift of the Holy Spirit has been received, the custom of fasting was salutarily and necessarily ordained, so that, if negligent freedom and immoderate license perchance presumed anything amid the very joys of the festivity, the censure of religious abstinence may chastise it.

C. VI. On the same.

Likewise, [sermon VIII on the fast of the tenth month]. The usefulness of this observance, dearest brothers, has been established especially in the ecclesiastical fasts, which from the teaching of the Holy Spirit are distributed through the circuit of the whole year in such a way that the law of abstinence is assigned to all seasons. Indeed, we celebrate the spring fast in Lent, the summer fast at Pentecost, the autumn fast in the seventh month, and the winter fast in this one, which is the tenth, understanding that nothing in the divine precepts is empty and that all the elements serve the word of God for our instruction, since through the cardinal points of the world itself, as though through the four Gospels, we learn with an unceasing trumpet what we both preach and practice. Part II. GRATIAN. The first, fourth, seventh, and tenth months, however, we ought to understand not according to the reckoning of the Hebrews, but according to ours. For the first month among them is April, the fourth July, the seventh October, and the tenth January. Jerome, commenting above on Zechariah, explains what cause of fasting they had in these months and, in addition, in the fifth month, which is August, saying:

C. VII. Why the law commanded fasts in the aforesaid months.

"The fast of the fourth, the fast of the fifth, the fast of the seventh, and the fast of the tenth"—understand "month"—"shall be turned for the house of Judah and Jerusalem into feast days and gladness." In this place many of our writers have said many things discordant among themselves. § 1. We are therefore compelled to have recourse to the Hebrews and to seek the truth of knowledge from the fountain rather than from the streams. § 2. The fast of the fourth month, which among the Latins is called July, on the seventeenth day of the same month, we judge to be that occasion when Moses,

descending from Mount Sinai, cast down and shattered the tablets of the law, and, according to Jeremiah, the walls of the city were first breached. In the fifth month, which among us is called August, when sedition had arisen among the people because of the spies of the Holy Land, they were commanded not to ascend the mountain but to wander far from the Holy Land for forty years with lengthy losses, so that, except for two men, Caleb and Joshua, all would fall in the wilderness. In this month the temple at Jerusalem was also burned and destroyed both by Nebuchadnezzar and, many centuries afterward, by Titus and Vespasian; the city of Bethel, to which many thousands of Jews had fled, was captured.

In the seventh month, which among us is called October, Gedaliah was killed, and the tribe of Judah and the remnants of Jerusalem were scattered. In the tenth month—which among us is called January, because it is the gateway and beginning of the year—Ezekiel, placed in captivity, and all the people of the captives heard that the temple had been overthrown in the fifth month, which we learn most fully in the same prophet. This, therefore, is the whole of what is said: know that the days of lamentation and fasts which until now you have held for mourning—because "I have purposed to do good to Jerusalem and the house of Judah"—are to be turned for you into gladness, joy, and solemnities, provided only that you love truth and peace. According to the anagogical sense, because we fast when the bridegroom is taken from us and we do not deserve to have his presence, when the Lord has returned to us and purposed to do good to us, every sadness will be turned into joy, and the former famine of the word of God will be compensated by the presence of his teachings and the fullness of heavenly bread. Part III. GRATIAN. The fasts of the fourth month, however, do not appear capable of being celebrated before the day of Pentecost. For from the day of the Lord's resurrection until the day of Pentecost they are not induced to observe fasts. Hence Ambrose, in the sermon of the same day, [LXI], which begins thus:

[C. VIII.]

Your holiness ought to know: "Throughout these fifty days there is for us a continual and uninterrupted festivity, such that throughout this whole time we neither proclaim fasts to be observed nor bend our knees to entreat God." "And below: § 1. Therefore, after the likeness of the Lord's resurrection, the entire courses of fifty days are celebrated, and all these days are reckoned as Lord's days. For the resurrection is the Lord's. Rising on the Lord's day, the Savior returned to men, and after the resurrection he conversed with men throughout the whole fifty-day period. It is therefore necessary that the festivity of those things be equal whose holiness is also equal. Therefore we do not fast during the fifty days, because in these days the Lord dwells with us." The same in the *Apology for David*: "We celebrate this number—namely, the fiftieth—with joy after the Lord's passion, the debt of all guilt having been remitted and the bond having been canceled, free from every bond, and we receive the grace of the Holy Spirit coming upon us; on the day of Pentecost fasts cease, praise is spoken to God, and Alleluia is sung." [GRATIAN.] Necessarily, therefore, the Church established that fasts be celebrated after the day of Pentecost. But the denial that one is to fast during those fifty days is understood with respect to the necessity of observance.

Hence in the sermon of the same day, [LX], which begins thus:

[C. IX.]

I believe you know, brothers: "We celebrate the day of Pentecost with no less gladness than we took care to celebrate the holy day of Pasch. For then, just as we have now done, we fasted on the Sabbath, celebrated vigils, and persisted through the night in prayers; hence it is necessary that a like observance follow a like gladness." [GRATIAN.] The observance, however, is like with respect to the deed, not with respect to necessity. Likewise Isidore, [book I *On Ecclesiastical Offices*, c. 42]:

[C. X.]

"From Pasch until Pentecost, although the tradition of the churches has relaxed the rigor of abstinence at meals, nevertheless, if any monks or clerics desire to fast, they are not to be prohibited, because Antony and Paul and the other ancient fathers are read to have abstained even on these days in the wilderness and not to have relaxed abstinence except only on the Lord's day."

[C. XI.]

Likewise Jerome to Lucinus, [epistle XXVIII]. "Would that we could fast at every time, which in the Acts of the Apostles we read the Apostle Paul and the believers with him to have done on the days of Pentecost and on the Lord's day. Nor do I say this because I think one should fast on feast days and would take away the continuous holidays and solemnities of fifty days; rather, let each province abound in its own judgment and regard the precepts of its elders as apostolic laws."

C. XII. A bishop can be ordained on Holy Saturday after the hour of baptism.

Likewise Pelagius to Peter, Bishop of Potenza. We have received the writings of your affection, by which you signify that Latinus, deacon of the church of Grumentum, was elected by all to the episcopate of the church of Marcelliana or Clusium, which you already reported before this time; and we commanded that he come, believing that they had received from his bishop a dimissory letter concerning his person. But if they have now done this, cause him to come quickly to the city of Rome so that, if God commands, he may be ordained on Holy Saturday after the hour of baptism. For if he does not arrive before the aforesaid day, he will be compelled to wait until the fasts of the fourth month.

Distinction LXXVII

GRATIAN. At these times, according to Anacletus, Zephyrinus, Gelasius, and Pelagius, bishops, priests, and deacons are to be ordained. According to Pope Leo, however, the best man among the priests or deacons of the same church is to be ordained metropolitan. But no one from among monks or laymen ought to arrive at the supreme priesthood except through the grades of the Church. Hence Pope Gelasius:

C. I. No one is to aspire to the priesthood except through the distinct grades.

Enacting this, we command you and all to observe it: that those who deserve to be ordained are to approach ecclesiastical orders in the Church in this way; that is, if anyone deserves to be a bishop, let him first be a doorkeeper, then a reader, thereafter an exorcist, from there let him be consecrated an

acolyte, and finally a subdeacon, then a deacon, and afterward a priest; from there, if he deserves it, let him be ordained bishop. Likewise Zosimus, Bishop of the city of Rome, says, [to Hesychius, epistle I, c. 3]:

C. II. What intervals of time are to be observed in the individual grades.

In the individual grades these periods are to be observed if a man has given his name to ecclesiastical ministries from infancy: he is to be held among the readers and exorcists for five years; thereafter let him be made an acolyte or subdeacon for fourteen years, and thus, if he deserves it, let him approach the blessing of the diaconate, in which order he ought to adhere for five years if he has conducted himself blamelessly. Thereafter, with his years of service supporting him and proofs of his own faith having been given through so many grades, he will be able to merit the priesthood; from which place, if a more exacting life has led him to good conduct, he ought to hope for the supreme pontificate. § 1. Let the defenders of the Church also, who are made from laymen, be held to the aforesaid observance if they deserve to be in the clerical order.

C. III. On the same.

Likewise Pope Siricius, [to Himerius of Tarragona, epistle I, c. 9]. Whoever therefore has devoted himself to the services of the Church from his infancy ought to be baptized before the years of puberty and joined to the ministry of the readers. If from the beginning of adolescence until the thirtieth year of age he has lived commendably, content with only one wife—and she a virgin whom he received with the common blessing through the priest—he ought to be an acolyte and subdeacon, after which let him approach the grade of the diaconate if he has first proved himself worthy, with continence going before. There, if he has ministered laudably for more than five years, let him fittingly obtain the presbyterate. Thereafter, after ten years, he will be able to attain the episcopal chair, provided nevertheless that through these periods the integrity of his life and faith has been approved. But one who, already advanced in age, is stirred by the manner of life of a better purpose and hastens to pass from the lay state to the sacred soldiery will obtain the fruit of his desire in no other way than if, at the time when he is baptized, he is immediately joined to the number of readers or exorcists, provided nevertheless that it is established that he has had or has one wife and received her as a virgin. When he has been initiated, after two years have been completed, let him be made an acolyte and subdeacon for another five years, and thus let him be promoted to the diaconate if through these periods he has been judged worthy. Thereafter, with the passage of the required periods, let him not undeservedly be joined to the presbyterate or episcopate if the election of the people and clergy has summoned him.

C. IV. On the same.

Likewise from the Sixth Synod, [c. 15]. Let a subdeacon be ordained at no less than twenty years of age. § 1. But if anyone has been ordained in some priestly order outside the established periods, let him be deposed.

C. V. On the same.

Likewise from the Third Council of Carthage, [c. 4]. It has pleased us that deacons are not to be ordained, nor virgins consecrated, before twenty-five years of age, and that readers are not to salute

the people.

C. VI. The Levitical blessing is not to be furnished to those younger than twenty-five years.

Likewise from the Council of Agde, [cc. 16 and 17]. Let a bishop by no means entrust the blessing of the diaconate to persons younger than twenty-five years. § 1. Certainly, if married young men have consented to be ordained, the will of their wives is also to be sought in such a way that, with the sleeping chamber of the dwelling set apart and religious life promised, they may be ordained after they have together been converted. § 2. But let no metropolitan presume to ordain a priest or bishop before thirty years, that is, before he reaches the age of a perfect man, lest through his age—as sometimes happens—he be blamed for some error.

C. VII. On the same.

Likewise from the Fourth Council of Toledo, [c. 20]. In the old law the Levites are commanded to serve the tabernacle from the twenty-fifth year, whose authority the holy Fathers also followed in the canons. Forgetful both of divine law and of the precepts of the canons, we make infants and boys Levites before the lawful age or experience of life. And therefore both divine law and the canonical judgments admonish us that this is not to be done by us any longer, but that Levites be consecrated from their twenty-fifth year of age and priests ordained from their thirtieth.

C. VIII. Through what intervals of time one who is elected from among monks into the clerical state is to be ordained.

Likewise Gelasius, [Pope, to the Bishops throughout Lucania, epistle I, c. 3]. If anyone instructed in a religious purpose and monastic disciplines approaches the clerical office, first let his past life be investigated: whether he is proved to be stained by no grave crime, whether perhaps he has not had a second wife, and whether he is shown not to have taken a woman rejected by her husband.

[C. IX.]

The same, [in the same and the following chapter]. Let a novice monk supported by uprightness of conduct be made immediately a reader, notary, or certainly a defender; after three months let him be an acolyte, especially if age also supports him in this. In the sixth month let him receive the name of subdeacon, and, if he is of modest manner of life and upright will, in the ninth month let him be a deacon, and when the year has been completed let him be a priest; for the devotion of a holy purpose voluntarily undertaken is shown to have furnished him what the intervals of years would have conferred. § 1. But if any layman is to be aggregated to ecclesiastical offices, it is fitting to examine a person of this kind in each of the matters comprehended above so much more carefully as it is established that there is a difference between worldly and religious life, because ecclesiastical ministries are in any event to be assigned to suitable persons, not thrust upon unsuitable merits. And what can be fit for sacred services is to be sought in their qualities so much more as time is cut away from the period within which they would be attained, so that uprightness of conduct may be shown to possess what a more extended course of practice has not conferred, lest through the occasion of supplying a scarcity of clergy we be reckoned to have introduced vices into divine worship rather than to have procured lawful advantages for the Lord's household. For their promotions we nevertheless add six months beyond the limits of a year, since, as has been said, a distinction ought to exist

between a person devoted to divine worship and one coming from the manner of life of laymen. Yet we believe these things are to be indulged only to such an extent that, when this occasion has ceased for the churches, the ancient form of the paternal canons is preserved.

Distinction LXXVIII

GRATIAN. At what age priests ought to be ordained Pope Boniface defines, saying:

C. I. A priest is not to be ordained before thirty years.

If anyone has not completed thirty years of his age, let him in no way be ordained a priest, even if he is very worthy.

[PALEA.

C. II. On the same.

Likewise in the *Novels*, in the *Authenticum*, *Concerning the Most Holy Bishops*, § "Clerics," in Julian the Antecessor, constitution CXV, c. 19. Let no one be consecrated a priest who is younger than thirty years; let no one be made a deacon or subdeacon who is younger than twenty-five years; let no one be numbered among the readers who is younger than eighteen years; let no woman be consecrated among the deaconesses of the most holy Church who is younger than forty years or has come to a second marriage.]

C. III. No one is to be ordained a priest unless approved by a lengthy examination.

Likewise Pope Leo, [to the African Bishops, epistle LXXXV, c. 1]. What is it to impose hands quickly, if not to grant priestly honor to unapproved persons before the age of maturity, before the time of examination, before the merit of obedience, and before experience of discipline? And what is it to share in another's sins, if not for the one ordaining to be made such as is the man who did not deserve to be ordained?

C. IV. A priest is not to be ordained before thirty years.

Likewise from the Council of Neocaesarea, [c. 11]. Let a priest not be ordained before thirty years of age, although he may be of approved life; rather, let him be kept until the predetermined time. For the Lord was baptized in his thirtieth year and then preached. GRATIAN. This is regular, whence Christ, John the Baptist, Ezekiel, and certain of the prophets are not read to have preached or prophesied before this. But because Jeremiah and Daniel are read to have received the spirit of prophecy before youthful age; David and Solomon also are found to have been anointed in adolescence; John the Evangelist, while still an adolescent, is found to have been elected by the Lord as an apostle and sent with the others to preach; and the Apostle Paul also is asserted to have been elected by the Lord and sent to preach in adolescence, the Church likewise, when necessity demands, has been accustomed to ordain certain persons before the thirtieth year. Hence Pope Zacharias to Bishop Boniface, [epistle VI, whose beginning is "Blessed be God"]:

C. V. When necessity compels, priests of twenty-five years are to be ordained.

If men of thirty years are not found and necessity demands it, let priests be ordained from twenty-five years.

Distinction LXXIX

GRATIAN. Part I. The Apostolic Lord, however, is to be enthroned only by the Cardinals and religious clerics. Hence Pope Nicholas [II] says, [in the epistle in which he reports the synod held by him at Rome, c. 1]:

C. I. Concerning one who is enthroned without the concordant election of the Cardinals.

If anyone is enthroned in the apostolic see without the concordant and canonical election of its Cardinals and thereafter of the religious clerics following them, let him be regarded not as Pope or Apostolic Lord, but as an apostate.

C. II. While the Pope survives, let no one dare to speak about the election of a future Pontiff without consulting him.

Likewise Pope Symmachus, [in the First Roman Synod, cc. 3 and 5]. If anyone, while the Pope survives, is convicted of furnishing favor to anyone in any manner for the Roman pontificate, let him be deprived of the honor of his place. And below: If any priest, deacon, or cleric, while the Pope is unharmed and without consulting him, shall attempt either to lend his subscription for the Roman pontificate, to promise written pledges, to furnish an oath, certainly to promise any support, or, with private meetings held concerning this cause, to deliberate or determine anything, let him be deprived of the dignity of his place or of communion. And below: Because of the hidden frauds and secret snares of conspiracies which the judgment of this severity pursues, if anyone brings to ecclesiastical notice the counsels of those who have acted contrary to this synod concerning the ambition for the pontificate, and convicts them by reasonable proof, although a participant in an action of this kind, let him not only be purged of every fault but also be raised up by a reward that is not unworthy.

C. III. No one is to be promoted to the summit of the apostolate unless from among the Cardinals.

Likewise from the Council of Pope Stephen, [III]. It was fitting that this most sacred lady, our Roman Church, be duly ordered according to what was instituted by Blessed Peter and his successors, and that one of the cardinal priests or deacons be consecrated to the summit of the apostolate.

C. IV. On the same.

Likewise from the same. Let no layman, nor one from another order, ever presume to be promoted to the sacred pontifical honor unless, ascending through the distinct grades, he has been made a cardinal deacon or priest.

C. V. Let a bishop, monk, or layman who invades the Roman Church and breaks into the grade of her sons be anathematized.

Likewise from the same. If anyone from among bishops, monks, or laymen, breaking contrary to the institutes of the canons and holy Fathers into the grade of the sons of the holy Roman Church, that is, of the cardinal priests and deacons, shall presume to enter it; and if anyone from among the aforesaid shall attempt to invade this apostolic see and shall wish to ascend to the supreme pontifical honor, let a perpetual anathema be made against him and those favoring him. And below: § 1. If anyone presumes to resist the priests and primates of the Church or all the clergy in electing a Roman Pontiff for themselves according to canonical tradition, let him be anathema.

C. VI. Let him be anathema who presumes to contradict the canonical election of the Roman Pontiff.

Likewise from the Council of Pope Leo, [IV]. If anyone presumes to oppose the priests, the noble primates, or all the clergy of this holy Roman Church in the election of the Roman Pontiff, as is read to have been enacted in the council of the most blessed Popes Boniface and Stephen, let him be anathema.

C. VII. No bishop's election is to be made until after the third day following the burial of the other.

Likewise from the Council of Boniface, [Pope III]. Part II. While the Roman Pontiff or the bishop of his city is living, let no one presume to speak or make parties for himself until the third day after his burial, when the clergy and sons of the Church have been assembled; and then let the election be made. Part III. GRATIAN. But it is asked: if two men have been ordained through the temerity of the contenders, which of them is to be preferred to the other? Concerning them Honorius Augustus writes as follows to Pope Boniface:

C. VIII. If two have been ordained through the temerity of the contenders.

If perhaps two men have been ordained contrary to divine law through the temerity of the contenders, we permit neither of them to be the future priest; rather, we judge that he alone is to remain in the apostolic see whom divine judgment and the consent of the whole body shall elect from the number of the clerics by a new ordination. Part IV. GRATIAN. This chapter, however, is not to be understood of one who, when one man has been ordained through apostasy, is enthroned in the apostolic see by the Cardinals and religious clerics, even if that apostate has violently held the chair of Blessed Peter in such a way that a canonical election cannot be made within the City. Hence Pope Nicholas [II, in the Roman Council] enacted, saying:

C. IX. Concerning one who is ordained by money or popular tumult, not by canonical election.

If anyone is enthroned in the apostolic see by money, human favor, popular tumult, or military tumult, without the canonical and concordant election of the Cardinals and the religious clerics following them, let him be regarded not as the Apostolic Lord but as an apostate; and let it be permissible for the Cardinals and other God-fearing clerics and laymen to anathematize the invader and drive him from the apostolic see with human aid. But if they are unable to accomplish this within

the City, having assembled by apostolic authority outside the City in whatever place pleases them, let them make the election, with authority granted to the elected man to govern and dispose the affairs and advantage of the holy Roman Church according to the character of the time, as though he had been enthroned. Part V. GRATIAN. The election of the Roman Pontiff, however, ought also to be made with the deliberation of his predecessor. Hence Symmachus says, [in the First Roman Synod, c. 4]:

C. X. If the Pope is unable to determine concerning the election of his successor.

If the Pope's passing occurs unexpectedly, so that he cannot first determine concerning the election of his successor as was approved above, then, if the election of the whole ecclesiastical order has come together upon one man, let the elected man be consecrated bishop. But if, as is customary, the interests of those among whom the contest arises begin to be diverse, let the judgment of the greater number prevail; yet in such a way that one who, captured by a promise, determined concerning the election by a judgment that was not upright is to lack the priesthood. Part VI. GRATIAN. As was shown above, the election of supreme priests ought to be made by Cardinals and religious clerics, but their removal is reserved to divine judgment. Hence Pope Anacletus says, [to the Bishops of Italy, epistle II, c. 2]:

C. XI. The Lord has reserved to himself the removal of supreme priests.

The Lord has reserved to himself the removal of supreme priests, although he granted their election to good priests and spiritual peoples.

Distinction LXXX

GRATIAN. Part I. According to Popes Lucius, Clement, and Anacletus, the places in which primates, patriarchs, archbishops, bishops, and priests are to be ordained are these. For Pope Lucius says:

C. I. In what places primates or patriarchs ought to be ordained.

The cities and places in which primates ought to preside were established not in modern times but many times before Christ's advent; even the gentiles appealed to their primates for greater affairs. § 1. In those very cities, however, after Christ's advent, the apostles and their successors placed patriarchs and primates, to whom episcopal affairs and, after the apostolic see, the greater causes are to be referred, with apostolic authority preserved in all things.

C. II. On the same.

Likewise Pope Clement, [to James, epistle I]. In those cities in which formerly among the gentiles there were their first flamens and first doctors of the law, Blessed Peter commanded that primates of bishops or patriarchs be placed, who would handle the causes of the remaining bishops and the greater affairs in the faith. § 1. But in those cities in which, among the aforesaid gentiles, there were of old their archflamens, whom nevertheless they held as lesser than the aforementioned primates, he commanded that archbishops be instituted. § 2. In all the other individual cities he commanded that one bishop, and not several, be constituted, who would possess only the title of bishop, since even among the apostles themselves the institution was not equal, but one presided over all.

C. III. On the same.

Likewise Anacletus, [epistle III, c. 2]. Bishops ought not to be constituted in castles or small cities, but priests ought to be ordained and placed by bishops throughout castles, small cities, and estates, yet one in each of their individual titles. A bishop ought to be ordained not by one but by several bishops and, as was said, not to a small city, lest the name of bishop become cheap, but he is to be titled and named for an honorable one. A priest, however, is to be set over a church established in any place whatsoever.

C. IV. On the same.

Likewise Pope Leo, [to the Bishops of Africa, epistle LXXXV, c. 2]. Certainly, as to what pertains to priestly dignity, among all the statutes of the canons we wish this to be observed: that bishops are not to be consecrated in just any places, nor in just any castles, and where they have not been before, since, where the peoples and assemblies are smaller, the care of priests suffices, while it is fitting for episcopal governance to preside only over larger populations and more populous cities, lest the priestly summit be granted to villages and estates or to obscure and solitary towns, which the divinely inspired decrees of the holy Fathers forbade.

C. V. On the same.

Likewise from the Council of Laodicea, [c. 57]. Bishops ought not to be ordained in villages and estates, but visitors—that is, those who travel around—are to be constituted. But we judge that those who were ordained before this are to do nothing without the knowledge of the bishop of the city. Priests likewise are to do nothing without the bishop's precept and counsel. Part II. GRATIAN. The sees of bishops, however, ought not to be separated by a long interval, so that they can assemble without difficulty for the consecration of their comprovincial bishop. Hence Gregory to Augustine, Bishop of the English, [response 8]:

C. VI. Episcopal sees ought not to be separated from one another by a long interval.

We wish your fraternity to ordain bishops in such a way that the bishops themselves are by no means separated from one another by a long interval, so that there may be no necessity by which they are unable to assemble at the ordination of a bishop. For the ordination of bishops ought in no way to be made without three or four bishops having been gathered.

Distinction LXXXI

GRATIAN. Part I. Let it suffice us to have said these things concerning those to be ordained and those ordaining, and concerning the distinctions and offices of the individual grades. But because we have lingered upon these matters somewhat more extensively, let us bring certain things coherent with the foregoing under an epilogue for remembrance. One who is to be ordained as bishop ought, as the Apostle writes, to be "without crime," that is, without mortal sin, which must be understood not only of a bishop but also of anyone elected to some prelacy of the Church. Hence Augustine writes upon John:

C. I. One who is ordained bishop ought to be without crime, that is, without grave sin.

When the Apostle Paul selected priests or deacons to be ordained, and anyone who is to be ordained to a prelacy of the Church, he did not say, "If anyone is without sin"—for if he had said this, every man would be rejected and no one would be ordained—but he said, "If anyone is without crime," such as homicide, adultery, some uncleanness of fornication, theft, fraud, sacrilege, and other things of this kind. § 1. A crime, however, is a grave sin most worthy of accusation and condemnation. Part II. GRATIAN. Therefore, anyone entangled in any of these ought not to be ordained; or, if, when already ordained, he is convicted of having committed any of them before or after the time of his ordination, he will be deprived of the office of the grade he received. Hence Pope Symmachus says:

C. II. One who teaches by words, not by deeds, does not rightly assume the person of an admonisher.

No one rightly assumes the person of an admonisher unless by his deeds he condemns errors and by his manner of life demonstrates love of innocence.

C. III. Let one who does not fear to elevate an unworthy man lack the order which he bestows.

Likewise Pope Celestine, [to the Bishops of Gaul, epistle II, c. 3]. Daniel, burdened by so many testimonies of crimes, assailed by so great an accusation, and, as is said, polluted by incest with sacred virgins, is asserted to have been ordained bishop. And, as is contained in the records of our archive, copies of which we also directed to you, he crept into the dignity of the pontificate at that very time when he was being summoned to plead his cause by letters sent by us. Let injury be absent from the sacred name. It is easier that the ordainer lost this dignity by giving it to such a man than that the ordained man obtained it. The one who believed that, by bestowing the pontificate, this man should be joined to himself will be associated with him when he is convicted. For whoever ordained such men shows what sort of man he himself is.

C. IV. The ecclesiastical order does not receive one who, in the examination or afterward, confessed and is ordained.

Likewise from the Council of Nicaea, [c. 9]. If any priests were promoted without examination and, when afterward examined, confessed their sins, and when they had confessed, men came and, contrary to the rule, imposed hands upon them, the ecclesiastical order does not receive these men. For in all things the Church defends what is irreproachable.

C. V. Fallen men tonsured through the ignorance or contempt of those ordaining are to be cast down.

Likewise from the same Council, [c. 10]. As for any of those who have fallen who were already ordained through ignorance or through the contempt of those who ordained them, this does not prejudice the ecclesiastical rule. For when it has been discovered, they will be deposed.

C. VI. Let one who pollutes the ministry by living unlawfully be made foreign to it.

Likewise Innocent, [to Maximus and Severus, epistle V]. The attached sequence of the petition declares what sort of complaint our son Maximilian brought. Led by zeal for faith and discipline, he does not suffer the Church to be polluted by unworthy priests, whom he asserts to have begotten sons while in the presbyterate. And therefore, brothers, after examining the tenor of this petition, which is appended, you ought to place in your midst those who are said to have perpetrated such things; and, when the objections charged against these priests have been examined, if they can be convicted, let them be removed from the priestly office—because those who are not holy cannot handle holy things—and let them be made foreign to the ministry which they polluted by living unlawfully.

C. VII. Through the bishop's providence a place of penance is to be assigned to anyone being deposed from an order.

Likewise Pope Eugenius, [II]. If a priest or anyone else advanced in an ecclesiastical order is found in a crime by which he is proved deserving of rejection, once deposed, let him be established through the bishop's providence in a well-considered place, where he may lament the sin and not commit it further.

C. VIII. Priests who scorn to do penance are to be confined in a monastery.

Likewise from the Council of Mainz. We have been told that priests canonically degraded because of their negligence live in secular fashion after losing their grade and neglect the good of doing penance. Hence we enact that, once their grade has been lost, they be sent to a monastery or a regular canonry for the sake of doing penance. But if any cause prohibits this from being done, wherever they are, let them not cease to do penance. But if, after losing their grade, they wish to live in secular fashion and neglect to do penance, let them be separated from the communion of the Church.

C. IX. A change of place benefits those converted to penance.

Likewise Isidore, [*Sentences, On the Supreme Good*, book II, c. 10]. A change of place sometimes benefits converts for the salvation of the soul; for frequently, when the place is changed, the affection of the mind is changed. It is therefore fitting for a man also to be bodily uprooted from the place where he served enticements. For the place where anyone lived wickedly places before the sight of the mind what he often either thought or did there.

C. X. A cleric convicted of or confessing adultery is to be confined in a monastery.

Likewise from the Seventh Synod of Orléans, [c. 7]. If any cleric has either confessed adultery or been convicted of it, once deposed from office, with communion granted, let him be confined in a monastery for the whole time of his life.

C. XI. On the same.

Likewise Pelagius to the Defender Constantine. Romanus, a cleric of the church of Tiano, was deposed from the clerical order for the crime of adultery which he is reported to have committed and, at our command, was confined in a monastery here in the city of Rome to do penance.

C. XII. A priest or deacon caught in a crime is to be deposed, but not deprived of communion.

Likewise from the canon of the Apostles, [c. 25]. Let a priest or deacon who is caught in fornication, theft, perjury, or homicide be deposed, but not deprived of communion; for Scripture says: "God does not judge twice for the same thing."

C. XIII. On the same.

Likewise. If any bishop, priest, or deacon has fornicated or committed adultery after receiving the grades of his diaconate, let him be deposed and, cast out from the Church, let him do penance among the laymen.

C. XIV. On the same.

Likewise from the First Council of Orléans, [cc. 9 and 12]. If a deacon or priest commits a capital crime, let him be expelled both from office and from communion. But if, because of his offense, he has removed himself from communion at the altar under profession as a penitent, even these men, if others are lacking and a cause of certain necessity arises, are permitted to baptize one requesting baptism.

C. XV. Priests, deacons, and subdeacons who lie in the crime of fornication are not to enter churches.

Likewise Gregory [VII] to all throughout the kingdom of Italy and of the Germans. If there are any priests, deacons, or subdeacons who lie in the crime of fornication, on behalf of almighty God and by the authority of Saint Peter we forbid them entrance to the church until they repent and amend. But if any prefer to persevere in their sin, let none of you presume to hear their office, because their blessing is turned into a curse and their prayer into sin, as the Lord bears witness through the Prophet: "I shall curse," he says, "your blessings." But those who are unwilling to obey this most salutary precept will incur the sin of idolatry, as Samuel bears witness and Blessed Gregory teaches: "Not to obey is the sin of divination, and not to acquiesce is the crime of idolatry." Therefore, whoever, while asserting himself to be a Christian, scorns to obey the apostolic see incurs the sin of paganism.

C. XVI. A bishop, priest, or deacon who takes a wife or retains one already taken is to be deprived of office and benefice.

Likewise Alexander II to the Bishops and King of Dalmatia. If from now on any bishop, priest, or deacon takes a woman or retains one already taken, let him fall from his proper grade until he comes to satisfaction; let him neither remain in the choir of those singing psalms nor have any portion of ecclesiastical property.

C. XVII. On the same.

The same to the Clergy of Milan. If anyone among the priests, deacons, or subdeacons, contumaciously deserting his office, chooses a woman for himself instead, just as he voluntarily relinquishes the office because of fornication, so because of transgression let him be compelled, even unwillingly, also to relinquish the benefice.

C. XVIII. On the same.

The same to the people of Milan. Those also who, so that they may be permitted to fornicate, abandon the divine office and, withdrawing from God, serve the devil and his works, just as they most justly make themselves foreign to the office, so we adjudge them to be deprived of the benefice of churches.

C. XIX. On the same.

Likewise Pope Lucius. Let such ministers of the altar, whether priests or deacons, be chosen for the Lord's offices as preserve continence. § 1. But if after his ordination it happens that a minister enters the bed of his own wife, let him not enter the thresholds of the sacristy, nor be the porter of the sacristy, nor touch the altar, nor receive from those offering the oblation of the sacrifice, nor approach or administer the portion of the Lord's body, nor perform the lesser offices without the authority of an elder. Certainly, let him not bring a ewer or chalice to the altar.

C. XX. A cleric who frequents the homes of matrons is to be deposed.

The same. Part III. Let a cleric not approach a woman's dwelling alone, nor hasten there without the command of an elder priest; let a priest not mingle conversation alone with a woman alone; nor let an archdeacon, under the pretext of humility or office, frequently enter the homes of matrons or perhaps secretly send some message to a matron through clerics or servants. If this has become known, let the former be deposed and the latter be barred from the thresholds of the church.

[PALEA.

C. XXI. On the same.

The same. But if perhaps there has been some intercession, let it be reported to the bishop. And if it is such a matter that he ought to go there by a pious intervention, let him himself proceed; but if not, let him direct someone from his side with two or three witnesses. Nevertheless, let no one dwell with an unrelated woman unless she is a close relative or sister. And let this be done with great solicitude. For we are not ignorant of the malice of Satan.]

[PALEA.

C. XXII. On the same.

From a decree of Pope Eugenius. If any of the priests—that is, a priest, deacon, or subdeacon—suspected of the crime of fornication with any woman is found after a first, second, and third admonition speaking with her or associating with her in any manner, let him be excommunicated, and let the woman be judged canonically.]

C. XXIII. Priests are not permitted to dwell together with women.

Likewise Gregory. Part IV. Priests to whom the Lord's people are entrusted ought with great steadfastness to keep watch over the Lord's sheep, lest they be torn by wolfish bites, that is, by the goads of the devil. § 1. Nor indeed ought I to keep silent about what I say with grave sadness of mind: I observe priests dwelling with women, which is impious to say or hear and is contrary to the enactments of the holy canons. For wherever there is such cohabitation of those dwelling together, the goads of the ancient enemy are not absent. And therefore they are to be admonished not to be

deceived by the fraud of the ancient enemy, so that, according to the Apostle's voice, our ministry may not be reviled. For we ought, brothers, to guard ourselves from unlawful things so that we may be able to lift pure hands to God. For it is written: "Be holy, because I am holy." But if anyone presumes to act otherwise, let him be deprived of the honor of his priesthood. Whence in every way we must guard, brothers, lest we deceive the people and that saying of the Prophet be fulfilled in us: "My priests contaminate holy things and reject the law." Another Prophet also rebukes them, saying: "You, O priests, who deceive my name, and you have said: In what thing do we deceive your name?" To whom it was answered: "Offering polluted loaves upon my altar. I have no good will in you, says the Lord, and I shall not receive sacrifice from your hands, because you are polluted."

C. XXIV. On the same.

The same to the Defender Symmachus, [book I of the *Register*, indiction IX, epistle 50]. We will that priests ought to be prohibited from associating with women, with the exception only of a mother, sister, or wife, who is to be governed chastely.

C. XXV. On the same.

The same in the *Register*, [book VII, epistle 39]. It is read that Blessed Augustine did not consent even to dwell with his sister, saying: "Those who are with my sister are not my sisters." Therefore, the great caution of a learned man ought to be an instruction for us.

C. XXVI. On the same.

Likewise from the Eighth Synod. In all things it is fitting to observe that it should be determined who the cleric is, and that he ought to appear before or speak to women at a determined time, in a determined place, and with determined persons, so that every impious suspicion may be excluded. Certainly, no principle of religion permits one man alone to approach one woman alone. "For two are better than one." For at the same time the matter is conducted both more faithfully and more safely. "For woe to one, because if he falls, there is no one to raise him."

C. XXVII. On the same.

Likewise from the Third Council of Carthage, [c. 17]. Let unrelated women by no means cohabit with any clerics, but only mothers, grandmothers, maternal and paternal aunts, sisters, daughters of brothers or sisters, and any women from the household who, by domestic necessity, were already dwelling with them even before they were ordained; or if their sons, after their parents were already ordained, have taken wives; or if necessity required wives to be brought from elsewhere for servants who do not have women in the household whom they might marry.

C. XXVIII. On the same.

Likewise from the Council of Laodicea, [c. 30]. Ministers of the altar, or indeed any clerics, those practicing continence, and Christians altogether ought not to have baths in common with women. For this is the foremost reproach among the gentiles.

C. XXIX. On the same.

Likewise Gregory to Januarius, Bishop of Cagliari, [book III, epistle 26]. As I hear, you prohibited your archdeacon from dwelling with women, and up to now you are despised in that prohibition. Unless he obeys your command, we will that he be deprived of sacred order.

C. XXX. Women who seek illicit companionship with clerics are to be sold by the bishop.

Likewise from the Fourth Council of Toledo, [c. 42]. Certain clerics, not having a lawful marriage, seek the prohibited companionship of unrelated women or their own female servants. And therefore, whatever women are joined to clerics in this manner are to be taken away and sold by the bishop, while those whom they infected by their lust are for a time bound over to penance.

C. XXXI. Let no women dwell with clerics except those whom kinship excuses.

Likewise Pope Siricius to Bishop Himerius, [epistle I, c. 12]. We suffer no women to be in the house of clerics except only those whom the Synod of Nicaea permitted to dwell with them for the sole reasons of kinship.

C. XXXII. Clerics are not to approach the homes of women except at the command of their superiors.

Likewise from the Third African Council, [c. 5]. Let clerics or those practicing continence not approach widows or virgins except at the command or permission of bishops or priests. And let them not do this alone, but with clerics or with those whom the bishop or priest has commanded. Nor are bishops or priests themselves to have access alone to women of this kind, but where either clerics are present or some Christians of grave character.

C. XXXIII. Bishops are to provide that virgins not be joined to familiar associations with clerics on the occasion of temporal needs.

Likewise from the Fourth Council of Carthage, [c. 102]. It pertains to the guilt of the bishop or priest who presides over the parish if, for the sake of sustaining the present life, younger widows or consecrated women are subjected to familiar associations with clerics.

[C. XXXIV.]

Likewise from the same, [c. 103]. Widows who are sustained by a stipend of the Church ought to be so assiduous in the work of God that they aid the Church by their merits and prayers.

Distinction LXXXII

GRATIAN. Part I. A bishop is also generally to provide necessities for the poor and for those who cannot labor with their own hands. Hence it reads in the First Council of Orléans, [c. 18]:

C. I. On the same.

Let a bishop bestow food and clothing—as far as it is possible for him—upon the poor or infirm who, because of weakness, cannot labor with their own hands.

C. II. One who has preferred pleasure to office is to be removed in every way.

Likewise Innocent to Exsuperius, Bishop of Toledo, [epistle III, c. 1]. Part II. You have proposed what ought to be observed concerning those placed in the ministry of the diaconate or the office of the presbyterate whom children begotten by them have disclosed to be or to have been incontinent. Concerning these men also the discipline of the divine laws is manifest, and the evident admonitions of Bishop Siricius of blessed memory have circulated: that incontinent men placed in such offices are to be deprived of every ecclesiastical honor and not admitted to such a ministry, which ought to be fulfilled by continence alone. For the authority of the sacred law is very ancient and has been guarded from the beginning: priests were commanded to dwell in the temple during the year of their turn, so that, serving the sacred oblations, they might claim the divine mysteries for themselves while pure and cleansed from every stain, and so that it might not be lawful to admit to sacred offices those who exercise carnal intercourse even with a wife, because it is written: "Be holy, because I, the Lord your God, am holy." The use of marriage had assuredly been relaxed for them for the succession of offspring because no one from another tribe had been commanded to approach the priesthood. How much more ought the priests or Levites themselves to preserve chastity from the day of their ordination, for whom the priesthood or ministry is without succession, and no day passes on which they are free either from divine sacrifices or from the office of baptism? For if Paul writes to the Corinthians, saying, "Abstain for a time, so that you may be free for prayer," and assuredly commanded this to laymen, how much more, therefore, will priests, whose continual office is both sacrificing and praying, always be obliged to abstain from intercourse of this kind? If a priest has been contaminated by carnal concupiscence, by what merit does he believe that he can be heard, when it has been said: "All things are clean to the clean, but to the defiled and unbelieving nothing is clean; rather, their mind or conscience is defiled"? But perhaps he believes this is permitted to him because it is written: "The husband of one wife." He did not say this so that the man might remain in the concupiscence of begetting, but because of future incontinence. He declares this more openly, saying: "But those who are in the flesh cannot please God. You, however, are no longer in the flesh but in the spirit." Yet that judgment is clearly unequal and different. For if the form of ecclesiastical life and discipline which circulated from Bishop Siricius to all the provinces is not proved to have reached some persons, pardon will not be denied to those who were ignorant, on condition that henceforth they begin wholly to abstain and retain their grades in which they were found, in such a way that it is not permissible for them to ascend to higher ones. It ought to be counted as a benefice for them that they do not lose this very place which they retain. § 1. But if any are disclosed to have known the form of living sent by Siricius and not immediately to have cast away the desires of lust, those men are to be removed in every way who, after the admonition had become known, judged that pleasure was to be preferred.

C. III. On the same.

Likewise Pope Siricius, [to Himerius, Bishop of Tarragona, epistle I, c. 7]. We have learned that very many priests of Christ and Levites, after long periods of their consecration, have begotten offspring both from their own wives and from shameful intercourse, and defend their crime by this prescription: that in the Old Testament the faculty of begetting is read to have been attributed to priests and ministers. Let whoever he is who follows lusts and teaches vices now tell me: if he thinks

that in the law of Moses the reins of luxury were indiscriminately loosened by our God for the sacred orders, why does he admonish those to whom the holy of holies were entrusted, saying, "Be holy, because I, the Lord your God, am holy"? Why also were priests commanded to dwell in the temple far from their own homes during the year of their turn? Clearly for this reason: lest they be able to exercise carnal intercourse even with their wives, so that, shining with integrity of conscience, they might offer a gift acceptable to God. When the time of their service had been completed, use of a wife had been relaxed for them solely for the sake of succession, because no one except from the tribe of Levi had been commanded to be admitted to God's ministry.

[C. IV.]

Likewise. Because certain of those concerning whom we speak, as your holiness reported, lament that they fell through ignorance, we say that mercy is not to be denied to them on this condition: that, without any increase of honor, they persevere as long as they live in this office into which they were reduced, provided nevertheless that after this they take care to show themselves continent. But those who rely upon the excuse of an unlawful privilege and assert that this was granted to them in the old law are to know that by authority of the apostolic see they have been cast down from every ecclesiastical honor which they used unworthily and can never handle the venerable mysteries from which they deprived themselves while panting after obscene desires. And because present examples admonish us to take caution for the future, if any bishop, priest, or deacon—which we do not desire—is hereafter found to be such, let him understand now that every approach to indulgence has been closed to him through us, because wounds which have not felt the medicine of poultices must be cut away with iron. Part III. GRATIAN. But one who is commanded to be deposed because of sin will be able, after worthy penance, to be restored in his order. Hence it reads in the Council of Gangra:

C. V. What penance is to be imposed upon a priest who has been convicted of fornication.

If a priest commits fornication, although according to the canons of the Apostles he ought to be deposed, nevertheless, according to the authority of Blessed Pope Sylvester, if he has not persisted in the vice, if, having confessed of his own accord, he has applied himself to rise again, let him do penance for ten years in this manner: for three continuous months, removed from the others, let him use bread and water from evening to evening, but on Lord's days and principal feasts let him be refreshed by a little wine, small fish, and legumes, without meat and lard, eggs, and cheese; clothed in sackcloth, let him remain upon the ground and continually implore the mercy of almighty God by day and night. When the three continuous months have been completed, let him come out, yet let him not proceed in public, lest the faithful flock suffer scandal in him; for a priest ought not to do public penance as a layman does. Afterward, when his strength has been recovered for a time, let him complete one year and a half on bread and water, excepting Lord's days and principal festivities, on which he will be able to use wine and lard, eggs, and cheese according to the canonical measure. When the first year and a half have been completed, lest he become hardened, let him become a participant in the Lord's body and blood and come to the peace; let him sing psalms with the brothers as the last in the choir; let him not approach the horn of the altar; according to the voice of Blessed Clement, let him perform the lesser offices. Thereafter, until the completion of the seventh year, at every time except the paschal days, let him fast on the three lawful weekdays in each week on bread and water. When the circuit of the seventh year has been completed, if the brothers among

whom he did penance have praised his worthy penance, the bishop will be able to recall him to his former honor according to the authority of Blessed Pope Callistus. Certainly, it is to be known that he will be able to redeem Monday by singing one psalter or, if need exists, by giving one denarius to the poor. When seven years have been completed, thereafter until the end of the tenth year let him observe Friday on bread and water, with no redemption intervening. § 1. The same penance will also belong to a priest for all other sins and crimes which lead him to deposition. Nor let this seem burdensome to anyone, if a priest, after a fall, worthily doing penance as was said above, returns to his former honors.

Distinction LXXXIII

GRATIAN. Part I. It is also to be provided that one who is elected to ordination, even if he appears foreign to his own vice, is not defiled by consenting to the vices of others. For as Pope Symmachus says: "There is no great difference whether you inflict death or permit it. For one is proved to inflict death upon the sick who, although he can, does not exclude it." Hence Gregory VII says, [in the *Register*, book VI, c. 12, of the Roman Synod celebrated in the year of the Lord 1080, otherwise 1078]:

C. I. A bishop who consents to the fornication of his clerics is to be suspended from office.

If any bishop, with payment or entreaties intervening, consents to the fornication of priests or deacons, or to the crime of incest, in his parish, or does not attack the crime committed by authority of his office, let him be suspended from office.

C. II. One who sins under the name of holiness harms the Church most of all.

Likewise Augustine. Certainly no one in the Church harms more than one who, acting perversely, has the name or order of holiness and of a priest. For no one presumes to rebuke him when he sins, and the fault is vehemently extended as an example, since the sinner is honored because of reverence for the order. Therefore, a bishop who does not correct the crimes of such men is to be called a shameless dog rather than a bishop.

C. III. One who does not resist error consents to it.

Likewise Innocent. An error which is not resisted is approved, and truth, when it is by no means defended, is oppressed. For to neglect to trouble perverse men when you can is nothing other than to foster them.

Nor is he free from the scruple of hidden association who ceases to oppose a manifest crime.

C. IV. It does not benefit one not to be polluted by his own error if he consents to another's.

Likewise Pope Pius, [epistle I to all Christ's faithful]. For what does it benefit him not to be polluted by his own error, if he furnishes consent to one who errs?

C. V. One who does not intervene consents.

Likewise Gregory. One who does not intervene to cut away the things that ought to be corrected appears to consent to one who errs. GRATIAN. But just as one ought not to flatter the vices of others, so neither ought one to delight in the praises of evil men. Hence Anacletus to all the faithful:

C. VI. Most wretched is the bishop who glories in the praises of evil men.

Nothing is more wretched than that pastor who glories in the praises of wolves. If he wishes to please them and chooses to be loved by them, great destruction will come from this upon the sheep. Therefore, no pastor can please both wolves and flocks of sheep. For a mind bound by earthly prisons loses the memory of labors. But just as diligence is found to be the mother of the arts in each one's work, so negligence is the stepmother of learning. Part II. GRATIAN. Although a priest ought to be immune both from his own crimes and from those of others, nevertheless, if he has conducted himself otherwise, the words of his preaching ought not for that reason to be contemned. For as Jerome says: just as lye flowing through damp ashes washes and is not washed, so good teaching through an evil teacher washes the souls of believers from the filth of sins.

Distinction LXXXIV

GRATIAN. Part I. A bishop also ought to be solicitous and vigilant concerning the defense of the poor, the relief of the oppressed, and the protection of monasteries. But if they neglect to do this, they are to be harshly corrected. Hence Gregory to Anthemius, Subdeacon of Campania, [book XI, epistle 29]:

C. I. A bishop who has been negligent concerning his office is to be corrected.

It has reached us that Paschasius, our brother and fellow bishop, is so idle and negligent in all things that in no respect is he recognized as a bishop, to such an extent that neither his church nor the monasteries, nor his sons or the oppressed poor, feel the zeal of his affection toward them; nor does he furnish any aid of defense to those supplicating him in matters in which it is just; and—what is still more grievous to say—he does not suffer in any way the counsels of wise men and those persuading what is right to be received, so that he might at least be able to learn from another what he is unable to attend to by himself. If this is so, know that you are not without fault, since you deferred rebuking and restraining him as is fitting. Therefore, we will that you ought, in the presence of other priests or certain noble men among his sons, to call him to account concerning this matter and exhort him. But if—which we do not believe—after this our exhortation he still attempts to be negligent in his customary manner, he is in every way to be sent to us, so that, placed here, he may be able to learn what and in what manner it befits a priest to do according to the fear of God.

C. II. On the same.

The same to the same, [in the same book, epistle 33]. It has been reported to us that the bishops of Campania are so negligent and unmindful of their honor that they display neither the care of paternal vigilance toward the churches or toward their sons, nor exercise solicitude for the monasteries, nor devote themselves to the protection of the oppressed or of the poor. And therefore by this authority we command you that, when they have been summoned to you, you strictly admonish them by our

mandate, so that they may be vigilant in those things which it is fitting for them justly to do according to God, lest any complaint concerning them provoke us again. But if after these things you know any one of them to be negligent, send him to us without any excuse, so that he may be able to feel in himself, by regular strictness, how grave it is to be unwilling to be corrected from those things which are reprehensible and greatly deserving of censure. Part II. GRATIAN. But what is commanded to priests concerning the purity of chastity is also to be understood concerning any persons serving at the altar. Hence in the Second Council of Carthage, [c. 2], Bishop Aurelius is read to have said:

C. III. Those who serve the divine sacraments are to preserve continence in all things.

When in the previous council the rule of continence and chastity was treated, these three grades were bound by a certain written enactment of chastity through their consecrations; I say bishops, priests, and deacons: it pleased us that, as befits sacred prelates and priests of God, as well as Levites and those who serve the divine sacraments, they be continent in all things, whereby they may obtain without hindrance what they ask from the Lord, so that we too may guard what the apostles taught and antiquity itself preserved. It was said by all the bishops: It pleases all that bishops, priests, deacons, and those who handle the sacraments, as guardians of chastity, abstain even from their wives. It was said by all: It pleases us that chastity be guarded in all things and by all who serve the altar.

C. IV. On the same.

Likewise from the Fifth Council of Carthage, [c. 3]. When the incontinence of certain clerics, although with their own wives, was reported, it pleased the council that bishops, priests, and deacons, according to the prior statutes, abstain even from their wives; and unless they do this, they are to be removed from ecclesiastical office. The other clerics, however, are not to be compelled to this, but the custom of each church ought to be observed. Part III. GRATIAN. Likewise, what commands that a bishop be the husband of one wife ought also to be extended to the other ecclesiastical orders. Hence Bishop Siricius writes to Himerius, Bishop of Tarragona, [epistle I, c. 11]:

C. V. Let a cleric who takes a widow or a second wife be content with lay communion only.

Whichever cleric takes a widow or a second wife shall immediately be stripped of every privilege of ecclesiastical dignity, with lay communion alone conceded to him. He will then be able to possess it only if afterward he commits nothing for which he ought to lack it. Part IV. GRATIAN. Although the name of priests is taken from old age, nevertheless it indicates maturity of wisdom rather than grayness of body. Hence Anacletus, [to the Bishops of Italy, epistle II]:

C. VI. Priests are called elders not so much by age as by wisdom.

Moreover, Moses is commanded to choose priests, that is, elders. Hence it is also said in Proverbs: "Gray hair is the glory of old men." But this gray hair designates wisdom, concerning which it is written: "The gray hair of men is prudence." And although we read that men lived nine hundred and more years from Adam down to Abraham, no other man was earlier called a priest, that is, an elder, except Abraham, who is shown to have lived far fewer years. Therefore they are called priests not because of decrepit old age but because of wisdom.

Distinction LXXXV

GRATIAN. Hospitality is so necessary to bishops that, if they are found to be strangers to it, they are rightly prohibited from being ordained. Hence Gregory writes to Bishop John, [book XII, epistle 6]:

C. I. One who does not know hospitality is not to become a bishop.

We have learned that Florentinus, archdeacon of the church of Ancona, who had been elected to the episcopate, indeed has knowledge of sacred Scripture, but is now so broken by the old age of his years that he cannot rise to the office of governance; they also add that he is so tenacious that a friend never enters his house for charity. But Rusticus, a deacon of the same church, who similarly had been elected, is said indeed to be a vigilant man, but, as is asserted, he does not know the psalms. We know that Florentinus, a deacon of the church of Ravenna, who is recalled to have been elected by all, is solicitous, but we are entirely ignorant of what he is like inwardly. And therefore let your fraternity, together with our brother and fellow bishop Armenius, visitor of the aforesaid church of Ancona, hasten to go there and inquire diligently concerning the life and conduct of each, whether they are conscious of no crime that would prohibit them from approaching this office. It must likewise be inquired whether what was said concerning the aforesaid archdeacon—that a friend has never entered his house—is true, and whether he is such from necessity or from tenacity; or whether he is so old that he cannot rise to govern; or whether, touching the sacrosanct Gospels, as has been reported to us, he gave an oath that he would never approach the episcopate. But it must also be investigated how many psalms the deacon Rusticus does not know. As for Florentinus, the deacon of Ravenna, if there is no crime, as we have said, which stands in the way, it is necessary to treat with his bishop that he ought to grant him permission; yet not by our mandate or edict, lest he seem to grant him against his will.

Distinction LXXXVI

GRATIAN. Part I. A bishop ought to be a teacher, lest the faults of his inferiors be poured back upon him who has received the office of teaching, which he does not know how to execute or neglects to execute. Hence Bishop Leo writes to the Bishop of Aquileia, [epistle III and LXXXIV, or LXVI]:

C. I. The faults of inferiors are imputed to the negligence of rulers.

The faults of the inferior orders are to be referred to no persons more than to idle and negligent rulers, who often nurture much pestilence while they dissemble from applying a more severe medicine.

C. II. Men are to be loved; sins are to be held in hatred.

Likewise Bishop Leo to Rusticus, Bishop of Narbonne, [epistle XC, or XCII, at the beginning]. Let sins, not men, be held in hatred; let the swollen with pride be corrected, and the weak tolerated; and what it is necessary to chastise more severely is not to be punished with the mind of one raging, but of one healing.

C. III. One who neglects to amend what he can has the guilt of the doer.

Likewise John VIII. Without doubt, he who neglects to amend what he can correct has the guilt of the doer. For it is written: "Not only those who do them, but also those who consent," are judged to be participants. § 1. And he offers prosperous things to the Lord who drives adverse things from the afflicted. And to neglect to cast down the perverse when one can is nothing other than to foster them. Nor is he free from the scruple of hidden consent who ceases to oppose a manifest crime. And he proves that he hates vices who condemns those who err. Nor does he leave himself a place for straying who has not spared one who transgresses. And the first grade of innocence is to hate wicked things. And he opens wide an entrance to delinquents who joins consent with depravity. And it profits no one not to be punished for his own sin when he is to be punished for another's sin. Part II. GRATIAN. But if anyone exceeds the measure in correcting, let him ask pardon not from his subjects but from the Lord. Hence Augustine, *On the Life of Clerics*:

C. IV. One who exceeds the measure in correcting is not to ask pardon from his subjects.

When the necessity of discipline compels you to speak harsh words for restraining conduct, even if you yourselves perceive that you have exceeded the measure, it is not required of you that you ask pardon for yourselves from your subjects, lest, while humility is observed too greatly among those who ought to be subject, the authority of governing be broken. And yet pardon is to be sought from the Lord of all, who knows with what benevolence you love those whom perhaps you correct beyond what is just. Part III. GRATIAN. In the teaching of sacred Scripture, however, he ought to set authority before all else, not to make a display of skill in secular letters. For it is not the office of a bishop to expound grammar, lest the praises of Jupiter resound in the mouth of a pontiff.

Hence Gregory writes to Bishop Desiderius, [book IX, epistle 48]:

C. V. A bishop ought to expound sacred Scripture, not grammar.

When many things had been reported to us concerning your studies, such gladness arose in our heart that we were quite unable to deny those things which your fraternity requests to be granted to it. But after these things it came to us—which we cannot recall without shame—that your fraternity expounds grammar to certain persons. We received this matter so grievously and rejected it so vehemently that we turned those things which had been said before into groaning and sorrow, because the praises of Christ do not fit in one mouth together with the praises of Jupiter. And consider how grave and wicked it is for bishops to sing what is not fitting even for a religious man. Part IV. GRATIAN. A priest also ought to be generous to those suffering need; otherwise he will bear the empty name of bishop. Hence Gregory writes, [book V, epistle 29], to Secundus, servant of God, among other things:

C. VI. Without generosity the name of bishop is borne in vain.

Stir our brother Bishop Marianus with whatever words you can, because I suspect that he has fallen asleep. Tell him, therefore, that with his place he is to change his mind. Let him not believe that reading and prayer alone suffice for him, so that in seclusion he strives to make nothing fruitful from his hand; rather, let him have an open hand, come to the aid of those suffering need, and reckon another's poverty as his own, because, if he does not have this, he holds the empty name of bishop.

Part V. GRATIAN. But in generosity itself a measure of things and persons is to be applied: of things, so that not all things are bestowed upon one person, but certain things upon each, so that we may be able to profit more persons, according to that saying of the Prophet: "He dispersed, he gave to the poor"; of persons, so that first to the just, and then to sinners—to whom, nevertheless, we are prohibited from giving, not because they are men, but because they are sinners. Hence Augustine, *On John*, Part II:

C. VII. It is a monstrous sin to give one's property to actors.

To give one's property to actors is a monstrous vice, not a virtue. And you know how frequent among such persons is fame accompanied by praise, because "the sinner is praised in the desires of his soul, and he who does unjust things is blessed."

C. VIII. Those who give anything to hunters sin gravely.

The same, on Psalm CII, [at the verse, "Who works mercies"]. Why do those who give to hunters give? Let them tell me: why do they give to a hunter? They love this in him, wherein he is most wicked; they feed this in him and clothe this in him—wickedness itself, made public by spectacles before all. Why do those who give to actors and those who give to prostitutes give? Do they not also give to human beings? Yet there they regard not the nature that is God's work, but the wickedness that is man's work.

[C. IX.]

Likewise. One who gives to a hunter gives not to a man but to a most wicked art. For if he were only a man and were not a hunter, you would not give to him: in him you honor vice, not nature.

[C. X.]

The same, on Psalm CXLVII. Men see hunters and are delighted: woe to the wretched, if they do not correct themselves. For those who see a hunter and are delighted will see the Savior and be grieved.

[C. XI.]

Likewise Jerome, on Psalm XC, [at the verse, "I will hope in the Lord"]. Esau was a hunter because he was a sinner. And we do not find at all in the holy Scriptures any holy hunter; we find holy fishermen.

[C. XII.]

Likewise Ambrose, in a homily, [XXXIII, *On Lent*]. What does it profit to fast in one's entrails and to luxuriate in hunts? To abstain from foods, but to wander in sins?

[C. XIII.]

Likewise. Do you think, brothers, that he fasts who at first dawn does not keep vigil at the church, does not seek out the holy places of the blessed martyrs, but rises, gathers his servants, arranges nets, brings forth dogs, and traverses glades and forests? He drags his servants with him, I say, who perhaps are hastening rather to church, and by his pleasures he heaps up the sins of others, not knowing that he will be guilty both for his own transgression and for the destruction of his servants.

C. XIV. What things are to be observed in generosity.

Likewise Ambrose, in the book *On Duties*. It is not enough to will well, but also to do well. Nor, again, is it enough to do well unless it proceeds from a good source, that is, from a good will. Likewise: § 1. Perfect generosity is commended by faith, cause, place, and time, so that first you act toward the household of faith. It is a great fault if, with your knowledge, a believer is in need; if you know him to be without means, to endure hunger, to suffer distress—especially one who is ashamed to be in need—if he has fallen into a case involving either the captivity of his own people or calumny, and you do not help; if he is in prison and is tortured by pains and punishments and, being just, on account of some debt—for although mercy is owed to all, more is owed to the just; if in the time of his affliction he obtains nothing from you; if, in the time of danger when he is being dragged to death, your money has more value with you than the life of one about to die: it is no light sin.

[C. XV.]

Likewise. The Lord does not will resources to be poured out all at once, but to be dispensed—unless perhaps as Elisha, who killed his oxen and fed the poor from what he had, so that he might be held by no domestic care, but, all things having been left behind, might give himself to prophetic instruction.

[C. XVI.]

Likewise. That generosity is also to be approved whereby you do not despise those near to you by kinship, if you know them to be in need. For it is better that you yourself come to the aid of your own, who are ashamed to request expense from others or to ask anyone for relief of their need. Yet they ought not to wish to become richer from that which you are able to confer upon the needy; for nature furnishes a cause, not favor. For you did not dedicate yourself to God for this purpose, that you make your own people rich, but that you acquire eternal life for yourself by the fruit of good work and redeem your sins by the price of compassion. Do they think that they ask little? They seek your price; they strive to take away the fruit of your life, and they accuse you because you have not made them rich, when they wish to defraud you of the reward of eternal life.

[C. XVII.]

Likewise. Age and weakness must also be considered in giving, and sometimes modesty as well, which reveals freeborn birth, so that you give more to the aged, who can no longer seek a livelihood for themselves. Weakness of body is likewise to be assisted more readily; so too if anyone has fallen from riches into want, especially without fault of his own, but has lost what he had either through robberies, proscription, or calumnies.

[C. XVIII.]

Likewise. It is also beautiful generosity to keep measure even in the gift to a poor person, so that you may abound for more persons, and not flow beyond measure for the sake of procuring favor. For whatever is brought forth from a pure and sincere affection is becoming: not to undertake superfluous buildings, nor to omit necessary ones. And this is especially fitting for priests: to adorn the temple of God with fitting honor, so that the hall of the Lord may shine also in its worship; to make expenditures of mercy frequent; to bestow upon strangers as much as is fitting—not

superfluous things but suitable ones. Likewise: § 1. Let us therefore suffer together with the calamities of others; let us assist the necessities of others as much as we can, and sometimes more than we can. For it is better to furnish grounds for mercy and suffer ill will than to put forward inclemency. We ourselves once incurred ill will because we broke the mystic vessels in order to redeem captives.

[C. XIX.]

Likewise, on Luke. To each class of men Saint John the Baptist also gave a fitting response, one to all in this manner: to publicans, that they exact nothing beyond what was prescribed; to soldiers, that they commit no calumny and seek no plunder—teaching that stipends were established for military service for this reason, lest, while expenses are sought, the robber range abroad. But these and the other precepts of duties are proper to individuals; the practice of mercy is common. Therefore the precept is common to all duties, necessary to all ages, and to be rendered by all. Neither publican nor soldier is excepted, neither countryman nor townsman, rich nor poor; all in common are admonished to confer upon one who does not have. For mercy is the fullness of virtues, and therefore the form of perfect virtue has been set forth for all, that they not spare their garments and food. Nevertheless, in mercy itself a measure is to be observed according to the possibility of the human condition, so that each person does not take everything away from himself but shares what he has with the poor person.

[C. XX.]

The same. Moreover, it is God's tradition that you feed your parents first. For if, according to the divine oracle, an insult to a parent is expiated by death, how much more hunger, which is much graver? In this place the Lord checks insolent boasting.

[C. XXI.]

The same, in the book *On Duties*. Feed one dying of hunger. For whoever is able to preserve a man by feeding him, if you have not fed him, you have killed him.

[C. XXII.]

Likewise Jerome. One who does not have clemency and is not clothed with the inward parts of mercy and tears, although he be spiritual, has not fulfilled the law of Christ. Part VI. GRATIAN. Likewise, a bishop also ought not to be a striker, that is, one quick to vengeance. Hence Gregory writes to John, Bishop of the Corinthians, [book XI, epistle 49]:

C. XXIII. A BISHOP OUGHT NOT TO BE QUICK TO VENGEANCE.

But if anything concerning any cleric comes to your ears that could justly offend you, do not readily believe it, nor let an unknown matter inflame you to vengeance; rather, in the presence of the elders of your church, the truth is to be diligently investigated, and then, if the character of the matter demands it, let canonical strictness strike the fault of the delinquent.

C. XXIV. Concerning a certain bishop who, before the solemnities of the masses on the Lord's day, went to plough up someone's harvest.

The same to Bishop Januarius, [book VII, indiction 2, epistle 1]. Such wickedness concerning your old age has come to my ears that, unless we took account of it humanely, we would strike it with a curse now fixed. For it was told to me that on the Lord's day, before celebrating the solemnities of the masses, you went to plough up the harvest of the bearer of the present letter, and after ploughing it up you celebrated the solemnities of the masses; and after the solemnities of the masses you also did not in the least fear to uproot the boundary markers of his possession. All who hear know what penalty ought to follow this deed. We had doubts concerning so great a perversity, but our son Abbot Cyriacus, when questioned by us, declared that he had learned it to be so. And because we still spare your gray hairs, we exhort you: come to your senses at last, wretched old man, and restrain yourself from such levity of conduct and perversity of works. And the nearer you are brought to death, the more solicitous and fearful you ought to be. Indeed, a sentence of penalty ought to have been hurled at you; but because we know your simplicity together with your old age, for the present we are silent. Those, however, by whose counsel you did this, we have decreed to be excommunicated for two months, in such a way that, if any human contingency befalls them within the space of two months, they are to be deprived of the blessing of the viaticum. Henceforth, however, be cautious of their counsels. Part VII. GRATIAN. Or he is prohibited from being a striker, so that he not, namely, strike anyone with his own hands.

Hence it reads in the Council of Agde:

C. XXV. A bishop is not permitted to strike anyone with his own hands.

A bishop is not permitted to strike anyone with his own hands. For this ought to be foreign to a priest. Part VIII. GRATIAN. A bishop is also prohibited from being desirous of shameful gain, lest by any dishonorable business he seek a livelihood or other necessities for himself. This ought to be understood generally concerning all persons bound to divine worship, that is, clerics and monks. Hence it reads in the Council of Chalcedon, [c. 3]:

C. XXVI. Those numbered among the clergy are not to serve shameful gains.

It has come to the holy synod that, among those numbered among the clergy, certain persons, for the sake of shameful gain, undertake leases of the possessions of others and the causes of secular persons, and through idleness separate themselves from sacred offices, but run to the houses of secular persons and undertake the administration of their property for the sake of avarice. Therefore the holy and great synod has decreed that henceforth none of these—that is, bishop, cleric, or monk—may lease possessions or become involved in secular administrations, except perhaps those who by the laws are drawn into inexcusable guardianships or curatorships of minors, or one to whom the bishop of the city itself has committed the government of ecclesiastical property, and of orphans and widows who are without defense, or of those persons who especially need ecclesiastical aid, for the fear of God. But if anyone transgresses these precepts, let him be subject to ecclesiastical correction.

Distinction LXXXVII

GRATIAN. Part I. Bishops ought to be present for widows and orphans who implore the aid of the Church, and they ought not to deny them the patronage of protection against the violence of wicked men. Hence Gelasius to Bishops Gerontius and Peter:

C. I. Bishops ought to be present for those imploring the patronage of the Church.

Although we ought not, insofar as we are able, to deny ourselves to any who hope in us, nevertheless we consider that the causes of widows are to be prosecuted all the more and more earnestly, since the divine declaration manifests that they are to be protected by us, or by all.

C. II. On the same.

The same to Bishop Anastasius. It befits a pontiff, when entreated, to assist those who are deprived of the aid of their own defense and who, because of the weakness of age, cannot benefit themselves by their own actions, because divinity also commanded that protection be bestowed upon wards. And therefore you will, by our delegation, furnish aid to Maximus and Januarius of the clerical office, who assert that they have been deprived of the assistance of parents or relatives, so that, protected against the wicked acts of their adversaries by the exertion of your execution, they may not experience harmful contrivances.

C. III. On the same.

The same to Bishops Leontius and Peter. Whoever hopes that remedies can be conferred upon him in his affairs by the intercession of our name, it befits us to furnish them with a ready spirit.

C. IV. On the same.

The same to Bishop Honorius. Mindful of divine recompense, do not doubt that it pertains to the pontifical conscience not to deny pious solicitude for the advantage of the needy.

C. V. Let the Church protect those whom it has received under its defense.

The same to Bishop Fortunatus. We judge it altogether irreligious and execrable if anyone, even a stranger, has not brought up with all fidelity and with the entire sanctity of his mind those received under his protection. And since the deacon Olympius of your affection is reported to be the maternal uncle of Felix and Olympius, and to have received them as little children to be nourished in the place of a guardian, we judge it to be beyond robbery that he has left them bereft of the small goods of their parents, as they assert, retaining some things and selling others contrary to laws and rights.

C. VI. It is not permitted to drag out those who flee to a church.

Likewise from the Council of Orange, [I, c. 5 and following]. Those who flee to a church ought not to be surrendered, but are to be defended by reverence for the holy place and by intercession. § 1. But if anyone believes that the slaves of clerics are to be seized in return for his own slaves who flee to a church, let him be struck with the strictest condemnation throughout all the churches. § 2. If anyone attempts to recall into servitude or service or the condition of a tenant farmer those manumitted in

the church and commended to the Church by testament, let him be restrained by ecclesiastical punishment.

C. VII. Let the Church protect freedmen in their freedom.

Likewise from the Council of Agde, [c. 29]. Part II. Let the Church, if necessity demands, protect freedmen lawfully made free by their lords; but if anyone, before a hearing, presumes either to seize them or to despoil them, let him be repelled from the Church.

C. VIII. Freedmen who are recalled into servitude are to be defended by priests.

Likewise from the Fourth Council of Toledo, [c. 72]. Freedmen who have been manumitted by any persons and are commended to the patronage of the Church, as the rules of the ancient Fathers established, are to be protected by priestly defense from the insolence of anyone, whether in their status of freedom or in the peculium which they are known to have.

C. IX. Let the Church defend exposed children if anyone arises as their claimant.

Likewise from the Council of Toledo. Part III. If an exposed child is taken up before a church by the compassion of anyone, let a written attestation be posted, so that if the one taken up has not been sought and recognized within ten days, the one who took him up may possess him securely. Certainly, one who arises as a claimant after the aforesaid time will be condemned by ecclesiastical strictness as a murderer, as the authority of the Fathers sanctioned.

Distinction LXXXVIII

GRATIAN. Part I. Clerics, therefore, are prohibited from undertaking the affairs of cupidity, not from bestowing pious care upon widows and orphans. Hence Pope Miltiades:

C. I. On the same.

The holy synod has decreed that henceforth no cleric is either to lease possessions or to involve himself in secular affairs, except on account of the care of wards, orphans, or widows, or if perhaps the bishop of the city commands him to have solicitude for ecclesiastical property. Here it is evident that secular affairs are one thing, ecclesiastical affairs another. Was Moses not in the world when he repeatedly entered the tabernacle and went out—he who within was carried away in contemplation, and without was pressed by the affairs of the weak? Thus Jacob too saw angels ascending and descending, because the rulers of the Church not only ascend by contemplation but also descend by compassion to her members below. And while priests imitate the deeds of these men, they both guard themselves and bear the burdens of their subjects.

C. II. On the same.

Likewise Gelasius, [Pope, to the Bishops throughout Lucania, c. 17]. It follows that we also considered that those things which a report recently sent to us from the districts of Picenum announced were not to be passed over, namely that very many clerics apply themselves to dishonest trading and shameful gains, taking no heed through any sense of shame of the Gospel reading in

which the Lord himself is declared to have expelled the merchants from the temple after beating them, nor recalling the words of the Apostle in which he says: "No one serving as a soldier of God entangles himself in secular affairs"; and dissembling with a deaf ear the Psalmist David as he sings: "Because I have not known business dealings, I will enter into the powers of the Lord." Accordingly, let persons of this sort know either that they must henceforth abstain from unworthy gains and cease from every contrivance and cupidity of any trading, or, in whatever grade they have been placed, that they are immediately to be compelled to abstain from clerical offices, because the house of God both ought to be and to be called a house of prayer, lest through the offices of trading it be instead a den of robbers.

C. III. Those constituted in sacred orders ought not to assume secular cares.

Likewise from the [Seventh] Canon of the Apostles. Let a bishop, priest, or deacon by no means assume secular cares; otherwise, let them be deposed.

C. IV. A bishop ought not to be occupied with secular causes.

Likewise Gregory to Romanus the Defender, [book VIII, epistle 11]. It has been brought to us that our most reverend brother Bishop Basil is occupied in secular causes just like one of the laity and unprofitably attends the law courts. Since this matter both renders him contemptible and annihilates priestly reverence, as soon as your experience receives this precept, compel him by strict execution to return, so that, with you pressing him there, he may not be permitted under any excuse to remain for five days, lest, if you permit him in any manner to remain there longer, you begin to be gravely culpable before us together with him.

C. V. A bishop is not to undertake the guardianship of testaments and the care of household property.

Likewise from the Fourth Council of Carthage, [c. 18]. A bishop is not to undertake the guardianship of testaments.

[C. VI.]

Likewise from the same, [c. 20]. A bishop is to recall no care of household property to himself, but is to be at leisure only for reading, prayer, and the word of preaching.

[C. VII.]

Likewise from the same, [c. 17]. A bishop is to administer the governance of widows, wards, and strangers not through himself but through the archpriest or archdeacon.

C. VIII. A cleric ought not to assume causes involving accounts.

Likewise Gregory to Prefect Quertinus, [epistle 30, book X]. It is unprofitable and exceedingly laborious for a learned man to assume causes involving accounts and to bind himself in them to what is not expedient.

C. IX. A cleric who is a merchant is to be shunned.

Likewise Jerome, [to Nepotian, *On the Life of Clerics*]. Shun as certain plagues a cleric who is a merchant, rich from being needy and glorious from being ignoble.

C. X. A cleric is not permitted to engage in trade.

Likewise Augustine, in the book *Questions of the Old and New Testament*, [c. 127]. Men are never permitted to fornicate, but sometimes they are permitted to engage in trade, and sometimes they are not; for before anyone is an ecclesiastic, he is permitted to engage in trade; once made one, he is not permitted.

[PALEA.

C. XI. On the same.

Likewise John Chrysostom, on Matthew, (that is, the author of the *Incomplete Work*, homily XXXVIII, on Matthew c. 21). By casting those selling and buying out of the temple, the Lord signified that a merchant can scarcely or never please God. And therefore no Christian ought to be a merchant; or, if he should wish to be one, let him be cast out of the Church of God, as the Prophet says: "Because I have not known business dealings, I will enter into the powers of the Lord." For just as one who walks between two enemies, wishing to please both and commend himself to both, cannot be without evil speech—for it is necessary that he speak evil of this one to that one, and of that one to this one—so one who buys and sells cannot be without lying and perjury. And with a few things interposed: § 1. But their property is neither stable, nor does what is gathered from evil advance toward good. For just as, if you sift wheat or another such thing in a sieve, while it is tossed here and there all the grains gradually fall downward, and at last nothing remains in the sieve except the refuse alone, so at the end nothing remains from the property of merchants except sin alone. § 2. But all men seem to be merchants; I will therefore show who is not a merchant, so that you may understand one who is not such to be a merchant. Whoever purchases a thing not in order to sell that same thing whole and unchanged, but so that it may be material for him to work something from it, is not a merchant; but one who purchases a thing in order to profit by giving away that same thing whole and unchanged is a merchant, who is cast out of the temple of God. § 3. Hence above all merchants the usurer is more accursed; for he sells a thing given by God, not one purchased, as the merchant does, and after the interest he demands his own thing back, taking another's things together with his own; but the merchant does not demand back the thing sold. § 4. Someone still says: Is one who leases a field so that he may receive a field-rent, or a house so that he may receive rents, not like one who gives money at usury? Far from it. First, because money is arranged for no use except buying; second, because one who has a field receives fruit from it by ploughing, and one who has a house takes from it the use of dwelling. Therefore one who leases a field or house is seen to give his own use and receive money, and in a certain way is seen to exchange gain for gain; you take no use from stored money. Third, a field or house grows old through use. But when money has been lent, it is neither diminished nor grows old. § 5. "And he overturned the tables of the money changers." Spiritually, money is understood as men, because, just as a coin has the imprint of Caesar, so a man has the imprint of God. And just as a solidus which does not have the imprint of Caesar is rejected, so also a man who does not show the image of God in himself is judged rejected. Hence Isaiah said to Jerusalem: "Your money is rejected; your taverners mix wine with water, etc." Therefore he

overturned the tables of the money changers, signifying that in the temple of God there ought not to be coins except spiritual ones, that is, those which bear the image of God, not of the devil. Or certainly by the tables of the priestly money changers he means the Scriptures. For when the New Testament succeeded the former, their Scriptures were overturned.]

[PALEA.

C. XII. On the same.

Likewise from the words of Augustine, (collected from here and there and reduced to a summary, on Psalm LXX, at the verse, "Because I have not known"). "Because I have not known literature": some codices have "business dealings"; in this the diversity of interpreters shows the sense and does not introduce error. Therefore, if this man speaks the praise of God all day for this reason, that he has not known business dealings, let Christians correct themselves and not engage in trade. But the merchant says to me: I bring goods from far away; I seek the reward of my labor, whence I may live: "the laborer is worthy of his reward." The matter concerns lying and perjury, not business. For I lie, not the business. For I could say: I bought it for so much; I shall sell it for so much; if it pleases you, buy it. How, therefore, do you call me back from trade? All artisans lie—shoemakers and farmers. Do you wish me to desire a time of high prices, so that I may be able to sell the grain that I preserved? But good farmers, you say, do not do this, nor do good merchants do those things. What then? Is it also evil to have children because, when their head hurts, evil and unbelieving mothers seek sacrilegious amulets and incantations for them? All these are sins of men, not of things. Therefore seek, O bishop, the merchant says to me, how you are to understand the Psalmist, and do not prohibit me from trade; for trade does not make me evil, but my iniquity and my lying. Let us therefore seek the merchants who presume to glory in their own works, whether they are against that grace which this Psalmist commends, so that no one glories in his own works. And just as, against proud physicians who promise health, this saying keeps watch: "All day long your salvation," so, against merchants glorying in their works, this saying keeps watch: "My mouth will announce your justice." Hence the Lord also expelled from the temple those who wished to establish their own justice and were ignorant of the justice of God. Business is rightly called *negotium*, because it denies leisure—*otium*—which is evil, and does not seek the true rest which is God.]

[PALEA.

C. XIII. On the same.

Likewise Cassiodorus, on the same Psalm LXX, at the same verse. What else is business than to wish to sell more dearly things which can be bought more cheaply? And below: Therefore those merchants are judged abominable who, giving no consideration to the justice of God, are polluted by the immoderate pursuit of money, loading their merchandise more with perjuries than with prices. Such persons the Lord cast out of the temple, saying: "Do not make the house of my Father a house of business."]

C. XIV. Let him lack the name of priest who calls the ministers of God away from their offices.

Likewise Cyprian, [to the Clergy and People of Furni, book I, epistle 9]. Part II. Nor do those men deserve to be named at the altar of God in the prayer of the priests who have wished to call priests

and ministers away from the altar. And therefore, since Victor, contrary to the form recently given by the priests in council, dared to appoint the priest Geminus Faustinus as guardian, let no offering be made among you for his falling asleep, nor let any supplication for his name be repeated in the church, so that the decree of the priests, made religiously and necessarily, may be observed by us.

Distinction LXXXIX

GRATIAN. Part I. It is also necessary that one be well set over his own house, so that from it certain proofs, as it were, of his future administration may be taken. But in the administration of the Church let him know that this rule is to be observed: that he commit no two offices at the same time to any person, however experienced, nor commit ecclesiastical property to secular men to govern.

Hence Gregory writes to all the Bishops:

C. I. Two offices are not to be committed to one person.

We command that the individual offices of ecclesiastical law be committed individually to each individual person. For just as in one body we have many members, but all the members do not have the same action, so in the body of the Church, according to the truthful saying of Paul, in one and the same spiritual body this office is to be conferred upon one person and that one committed to another. For the offices of two affairs are not to be committed at one time to one person, however experienced: because, if the whole body were the eye, where would be the hearing? For just as the variety of members through diverse offices both preserves the strength of the body and represents its beauty, so the variety of persons, with diverse offices distributed among them, likewise manifests both the strength and the comeliness of the holy Church of God. And just as it is unbecoming that in the human body one member perform the office of another, so it is undoubtedly harmful and at the same time most shameful if the individual ministries of affairs are not distributed among just as many persons.

C. II. Every bishop is to have a vice-lord and a steward.

Likewise Gregory to the Subdeacon Anthemius, [book IX, epistle 66]. Part II. We will that our brother Paschasius appoint for himself both a vice-lord and a master of the household, so that he may be able to stand capable and prepared both for arriving guests and for the causes which arise. But if you perceive him to be negligent, or deferring to fulfill those things which we say, all his clergy ought to be assembled, so that by common counsel they may themselves choose those whose persons can be appointed to the things we have said before. GRATIAN. The office of the vice-lord is to order the episcopal household. Hence Gregory to the Patrician Clementina, [book I, epistle 11], after other things:

C. III. What the office of a vice-lord is.

But as for the deacon Anatolius, whom you requested to be sent to you, the nature of the cause rather than the authority of severity makes us unable to do this. For we appointed him vice-lord, to whose judgment we committed the ordering of the episcopal household.

C. IV. On the same.

Likewise from the Council of Chalcedon, [c. 26]. Because in certain churches, as has come to us, bishops handle ecclesiastical property without a steward, it has pleased the council that all churches having bishops also have stewards from their own clergy, who are to govern the property of the Church according to the judgment of their bishop, so that the governance of the ecclesiastical property itself be not without testimony, and so that it not thereby happen that the property of the same Church is dispersed and disparagement is engendered against the priestly dignity. But if anyone does not observe this, let him be subject to the divine rules.

C. V. Ecclesiastical property is not to be committed to secular men.

Likewise Gregory to John, Bishop of Cagliari, [book VII, epistle 66]. It has been indicated to us that you committed the care of your patrimony to certain laymen, who afterward were detected in plundering and in wearing down your peasants. If this is so, it is fitting that the matter be strictly examined by you and that the cause between them and the peasants of your Church be investigated more subtly. And whatever fraud is found, let them be compelled to restore it with the penalty established by the laws. But henceforth your fraternity must beware lest the property of any church be committed to secular men and those not living under your rule, but rather to approved clerics from your office, in whom, if anything of depravity can be found, you may, as in subjects, be able to amend what has been done unlawfully; so that, namely, among you they may administer the office of their habit more fittingly than bring it under accusation. Part III. GRATIAN. Let him not dare to commit ecclesiastical offices to relatives or even to those joined to him by favor. Hence in the Tenth Council of Toledo, [c. 3]:

C. VI. A bishop is not to commit ecclesiastical offices to relatives or to those joined by favor.

It fittingly pleases all that such a deed be rescinded in the present and not be done hereafter. Therefore, whichever of the pontiffs henceforth attempts to entrust such gains either to blood relatives or to any persons bound to him by favor, to the ruin of his wicked presumption, let what was commanded be revoked as void, and let the one who appointed them be subject to excommunication for a year. But whatever things may perhaps have been taken are to be restored twofold by him who took them.

GRATIAN. Moreover, why the offices themselves are so to be distinguished and all not committed to one person is given to be understood from the authority of Gregory and from the authority of Pope Boniface, who says:

C. VII. The distribution of grades and orders preserves ecclesiastical unity.

For this purpose the foresight of ordering established that diverse grades and orders be distinct, so that, while lesser persons displayed reverence toward greater persons and greater persons bestowed affection upon lesser persons, a true concord might be made, a weaving from diversity, and the administration of the individual offices might be rightly conducted. Nor could the whole subsist by any other reason unless a great order of difference of this kind preserved it. That a creature cannot be governed or live in one and the same quality, the example of the heavenly hosts instructs us, because,

while there are angels and there are archangels, it is evident that they are not equal, but one differs from another in power and order, as you know.

Distinction XC

GRATIAN. Part I. A litigious man is also prohibited from being ordained, because one who by his power ought to draw the discordant to concord, and who is prohibited from receiving the offerings of those at dissension, ought by no means, through readiness to litigate, to provoke others to dissension. Hence it reads in the Fourth Council of Carthage, [c. 59]:

C. I. Discordant clerics are to be recalled to concord or cast down to concord.

Let a bishop draw discordant clerics to concord either by reason or by authority; let the synod condemn the disobedient through a hearing.

C. II. The offerings of brothers at dissension are not to be received in the church.

Likewise from the same, [cc. 93 and 94]. Let the offerings of brothers at dissension be received neither in the sacristy nor in the treasury. Likewise: § 1. The gifts of those who oppress the poor are to be rejected by priests.

C. III. One who does not have peace with his neighbor is proved to be outside the Church.

Likewise Cyprian, [*On the Unity of the Church*]. God had regard neither for Cain nor for his gifts;

for he could not have God at peace with him who had not peace with his brother but the discord of jealousy. What peace, therefore, do enemies of brothers promise themselves? What sacrifices do rivals of priests believe themselves to celebrate? Do those who gather outside the Church of Christ think that Christ is with them when they have gathered? Even if such persons have been killed in confession of the name of Christ, this stain is not washed away even by blood. The inexpiable and grave fault of discord is not cleansed even by suffering.

C. IV. Let murmurers be made strangers to the unity of the brothers.

Likewise from the Eighth Synod. Let one who murmurs be a stranger to the unity of the brothers, and let the work of one who has proved to be murmuring be cast away, lest he incur the penalty of the murmurers, concerning which the Apostle says: "Neither shall you murmur, as certain persons murmured and perished by the destroyer." Therefore, according to the measure of his work, let the sinner—who is fully disclosed in this saying of the Apostle—do penance at the judgment of the priest.

C. V. Those who love quarrels and contentions are to be corrected.

Likewise from the same. If any monk loves contentions or quarrels, or inflicts a manifest insult upon a brother, let him expiate it by prolonged penance according to the judgment of the ruler and the measure of the sin. Likewise: § 1. One who has proved contentious or murmuring is to do penance according to the judgment of the prior for as long as the character of the fault remains.

C. VI. Bishops at dissension are to be compelled to return to concord.

Likewise from the Fourth Council of Carthage, [c. 25]. If fear of God does not reconcile bishops at dissension, let the synod do so.

C. VII. On the same.

Likewise from the same, [c. 26]. Bishops are to take care that they exhort brothers at dissension, whether clerics or laymen, to peace rather than to judgment.

C. VIII. The gifts of those who oppress the poor are not to be received.

Likewise from the same, [c. 94]. The gifts of those who oppress the poor are to be rejected by priests.

C. IX. Those who scorn to return to concord are to be removed from the assembly of the faithful.

Likewise from the Council of Agde, [c. 31]. It also pleased the council that, as often happens, whoever have dissented from one another through hatred or a protracted lawsuit, and through prolonged obstinacy have been unable to be recalled to peace, are first to be reproved by the priests of the city. But if with pernicious intention they are unwilling to lay aside their enmities, let them be expelled from the assembly of the Church by a most just excommunication.

C. X. One who is unwilling to be reconciled to his brother is to be afflicted with most severe fasts.

Likewise Pope Fabian. If anyone who has been grieved is unwilling to be reconciled to his brother, when the one who grieved him has made satisfaction, let him be afflicted with the most severe fasts until he receives the satisfaction with a grateful spirit.

C. XI. Bishops are mutually to furnish counsel and aid to one another for firmly maintaining peace.

Likewise Innocent II. Part II. We command that bishops, having regard for God alone and the salvation of the people, with all lukewarmness set aside, mutually furnish counsel and aid to one another for firmly maintaining peace, and not omit this through love or hatred of anyone. But if anyone is found lukewarm in this work of God, let him incur the loss of his own dignity.

C. XII. Those who are unwilling to be reconciled to one another are to be driven from the communion of the faithful.

Likewise Pope Victor, [to the Africans, epistle II]. It has been reported to the apostolic see that some among you wish to harm their brothers and strive that they fall, similarly that they disagree in the sacraments, and that on account of this contentions and rivalries arise among you. We command you to turn away from these dissensions, to agree in all these things, and mutually to bear aid. For if you quickly neglect to do this and do not strive to be reconciled to one another, do not doubt that you will be driven from the communion of the apostolic see and of the whole Church.

Distinction XCI

GRATIAN. Part I. But one who is prohibited from seeking a livelihood for himself by shameful gain or dishonorable business is to obtain stipends from the offerings of the Church. But if the Church cannot suffice for him, let him find necessities for himself by his own craft or by agriculture, after the example of the Apostle, who lived from the labor of his hands, yet in such a way that by occasion of his work he not be absent from the vigils of the Church, something which is permitted to no one with impunity without bodily infirmity.

Hence Pope Pelagius:

C. I. Clerics who withdraw themselves from the morning or evening offices are to be corrected.

Eleutherius, our brother and fellow bishop, complains that his clerics act proudly against him contrary to the canons, and that, although he promised by a pledge made in the archive at our command that vigils would be celebrated daily in his church, he cannot fulfill it because they scorn it, but rather each attends to his own business with the service of the Church set aside. And therefore, by due rebuke restrain those whom he shows you to be contumacious, and compel them in every way to devote themselves to vigils.

[PALEA.

C. II. On the same.

Likewise from the Council of Nantes. In the morning, when the morning office has been completed, let the priest discharge the due burden of his service by chanting prime, terce, sext, and none, yet in such a way that afterward, at the fitting hours and when the signals designate them, they are publicly completed, according to possibility, either by himself or by the scholars. Then, when the hours have been completed and the sick visited, if he wishes, let him go out fasting to rural work, so that he may again be able to come to the aid of the needs of pilgrims and guests or of various travelers, and also of the sick and dead, until the hour established according to the character and suitability of the time. Likewise from the sayings of Saint Benedict: § 1. The Prophet says: "Seven times in the day I have spoken praise to you." This sacred number seven will thus be fulfilled by us if we discharge the offices of our service at the time of matins, prime, terce, sext, none, vespers, and compline, because concerning these the Prophet said: "Seven times in the day I have spoken praise to you." For concerning the nocturnal vigils the same Prophet says: "At midnight I arose to confess to you." Therefore at these times let us return praises to our Creator for the judgments of his justice.]

C. III. Without detriment to his office, let a cleric seek necessities for himself by a little craft.

Hence it reads in the same Council of Carthage, [IV, cc. 52 and 49]. Let a cleric prepare food and clothing for himself by a little craft or by agriculture, provided only that it be without detriment to his office. § 1. For a cleric who, without bodily infirmity, is absent from vigils is to be deprived of his stipend and excommunicated.

C. IV. On the same.

Likewise from the same, [cc. 51, 53, 48, and 50]. Let every cleric instructed in the word of God seek his livelihood by a craft. Likewise: § 1. Let all clerics who are able to work learn both little crafts and letters. But those who walk about in fairs or in the market not for the purpose of buying anything are to be degraded from their office. Those, however, who amid temptations turn aside from their office or act more negligently are to be removed from that office.

C. V. On the same.

Likewise from the First Council of Orléans, [c. 28]. But clerics who scorn to be present for the holy work are to receive ecclesiastical discipline according to the judgment of the bishop.

Distinction XCII

GRATIAN. Part I. But when they come to church, let them remember that one is to sing to God more with the heart than with the voice. Hence Jerome, in the epistle to the Ephesians:

C. I. We ought to praise God with the heart, not with the voice.

"Singing and making melody in your hearts to the Lord." Let the young men hear these things; let those whose office in the church is to chant psalms hear them: one is to sing to God not with the voice but with the heart, nor are the throat and jaws to be smeared with medicine after the manner of tragedies, so that theatrical melodies and songs are heard in the church. GRATIAN. Deacons, however, are found to be excepted from the office of singing and chanting psalms, lest, while they devote themselves to the modulation of the voice, they neglect the ministries of the altar. Hence Gregory, [book IV, epistle 44, and book XII after the end of the epistles, in a Council held by him]:

C. II. Let deacons not usurp the office of singing for themselves.

In the holy Roman Church there arose some time ago a custom exceedingly deserving of censure, that certain singers are chosen for the ministry of the sacred altar and, constituted in the order of the diaconate, devote themselves to modulation of the voice, though it was fitting for them to be at leisure for the office of preaching and the pursuit of almsgiving. Hence it frequently happens that in the sacred ministry, while a pleasing voice is sought, a fitting life is neglected, and the singer who is a minister provokes God by his conduct while he delights the people with his voice. For this reason, by the present decree I establish that in this see the ministers of the sacred altar ought not to sing, but are to discharge only the office of the Gospel reading during the solemnities of the masses; but I decree that the psalms and the other readings are to be provided through subdeacons or, if necessity demands, through the lesser orders. But if anyone attempts to go against this decree of mine, let him be anathema. Part II. GRATIAN. It has been shown briefly from what things those to be ordained ought to be immune. But from whose hands they ought to receive their orders is readily evident. For a priest and all constituted below him ought to be ordained by bishops. Hence it reads in the Council of Pope Martin:

C. III. Those who are not ordained by a bishop are not to chant psalms or read in the pulpit.

It is not permitted to chant psalms or read in the pulpit unless they are readers ordained by a bishop. GRATIAN. Concerning the bishops by whom, or in what places, they ought to be ordained, it was determined above. Part III. § 1. But now it is asked concerning those who, after being ordained, are not received by their own parish, or for some cause are unwilling to go to it, whether they can celebrate episcopal office in the parish of another. Concerning these it is found to have been established thus in the Council of Pope Martin:

C. IV. Let a bishop whom his parish does not receive exercise only the office of a priest.

If any ordained bishop, because of the contempt of the people or for some reason, and not through his own fault, does not go into the parish which had been given to him, it is fitting that he attain only the honor of the priesthood, so that he presume nothing concerning the property of the church into which he comes, but await what the holy council wills to judge concerning him.

C. V. Concerning an ordained bishop whom his parish does not receive.

Likewise from the Council of Antioch, [c. 18]. If any bishop after being ordained does not go to the parish for which he was elected—not through his own fault, but because either the people prohibit him, or for another cause not perpetrated through his fault—let him be a participant both in honor and in ministry, provided that he prove troublesome in nothing to the property of the church where he is known to minister. It is also fitting that he observe whatever the synod of the full province decrees by its judgment.

C. VI. Those not received by their own parish are not to inflict trouble upon others.

Likewise from the Council of Ancyra, [c. 28]. If any bishops have been ordained and not received by the parish in which they had been designated, and should wish to occupy other parishes and inflict violence upon their prelates by stirring up seditions against them, it pleased the council that they be cast out. But if they wish to reside as priests in the order of the priesthood where they had been before, they are not to be cast out from their own dignity. If, however, they stir up seditions against the bishops established there, let the honor of the priesthood also be taken away from such persons, and let them be marked by condemnation.

C. VII. Let a bishop who has neglected to go to the church committed to him be deprived of communion.

Likewise from the Council of Antioch, [c. 17]. If any bishop receives the episcopate through the imposition of hands and neglects to undertake the ministry committed to him, and does not consent to go to the church committed to him, it is fitting that he be deprived of communion until, under compulsion, he undertakes the office, or certainly until the synod of the priests of the same province fully decrees something concerning him.

C. VIII. Without the counsel of a full order, let a bishop not approach a vacant church.

Likewise from the same, [c. 16]. If any bishop who is without a see rushes into a church which has no bishop, surreptitiously winning over the people, without the counsel of the full order, it is fitting that he be alien to the Church, even if the people whom he led astray desire him. But we call that council full and perfect in which the metropolitan bishop has participated. Part IV. GRATIAN. But what was commanded above, that clerics withdrawing themselves from vigils are to be excommunicated, is to be understood concerning those who, frequently admonished by the bishop, scorn to correct their negligence. Hence it reads in the Council of Pope Martin:

C. IX. Let a cleric who, after being admonished by the bishop, neglects to be present at the morning or evening hours be excommunicated.

If any priest or deacon, or any cleric deputed to a church, is in any place in which there is a church and does not come to the church for the daily office of chanting psalms at the morning or evening hours, let him be deposed from the clergy, provided that, after being chastised, he has been unwilling to merit pardon from the bishop through satisfaction.

Distinction XCIII

GRATIAN. Part I. Inferiors owe obedience according to order to superiors. For such obedience is owed to the Supreme Pontiff by all that no one is permitted to communicate with a person toward whom, because of that person's acts, he has proved hostile, nor will one who deserts his chair be able to be in the Church. Hence blessed Peter, prince of the Apostles, addressing the people at the ordination of Clement, says among other things:

C. I. We ought not to communicate with one toward whom the Apostolic is hostile because of his depraved acts.

If this Clement is an enemy to anyone because of that person's acts, do not yourselves wait for him to tell you, "Do not be friends with that man," but you ought prudently to observe it, comply with his will without communication, and turn yourselves away from one whom you perceive to be opposed to him; and you are not even to speak with those with whom he does not speak, so that each person who is at fault, while he desires to have the friendship of you all, may hasten more quickly to be reconciled to the one who presides over all, and through this may return to salvation when he begins to obey the admonitions of the presider. But if anyone is a friend to those with whom he does not speak, he himself is one of those who wish to destroy the Church of God; and although he may seem to be with you in body, in mind and spirit he is against you. And this enemy is much more wicked than those who are outside and manifestly are enemies; for through the appearance of friendship he conducts hostile things and scatters and devastates the Church. And therefore, admonishing you by apostolic institutions of this kind, we instruct you so that, when your charity has been rendered more certain, it may strive hereafter to act more solicitously and cautiously, lest perverse and faithless men have the ability to harm the faithful and benevolent.

C. II. One whom the Roman Church repels ought to be received by no one.

Likewise Gregory, [book V, epistle 26]. I was greatly astonished that among so great a clergy and people of the church of Salona scarcely two from the sacred orders were found—namely my brother and fellow bishop Paulinus and my most beloved son Honoratus, archdeacon of the same church—who would by no means consent to communicate with Maximus as he seized the priesthood, and who recognized that they were Christians. For you ought, most beloved sons, to have considered your orders and to have recognized as repelled the one whom the apostolic see repelled, so that he might first, if he could, be cleansed of the charges brought against him, and then your affection might communicate with him, lest it become a participant in his obligation.

C. III. One who does not follow the chair of Peter is not in the Church.

Likewise Cyprian, [*On the Unity of the Church*]. Let one who deserts the chair of Peter, upon which the Church was founded, not trust that he is in the Church. GRATIAN. Bishops who are subject to apostolic ordination also owe this reverence: that every year they present themselves at the thresholds of the Apostles. Hence Popes Anacletus and Zacharias:

C. IV. Let bishops who are subject to apostolic ordination visit the thresholds of the Apostles every year.

According to the institutions of the holy Fathers and canons, let all bishops who are subject to the ordination of this apostolic see and who are nearby present themselves annually, around the Ides of May, at the thresholds of the holy princes of the Apostles Peter and Paul, with every excuse set aside. But let those who are far away fulfill this according to their written undertaking. But one who has proved a contemner of this constitution, unless he has been detained by illness, is to know that he is subject to canonical sentences. Part II. GRATIAN. But the remaining lesser persons in the Church ought always to be subject to the greater, as it reads in the Synod of Saint Sylvester, [c. VII]:

C. V. Let lesser persons display obedience to greater persons.

From the subdeacon down to the readers, let all be subject to the cardinal deacon, a most reverend man, displaying honor to him in the church. Moreover, in every place, whether in public or in the bosom of the church, let the priest display service to the pontiff, the deacon to the priest, the subdeacon to the deacon, the acolyte to the subdeacon, the exorcist to the acolyte, the reader to the exorcist, the porter to the reader, the abbot to the porter, and the monk to the abbot.

C. VI. What the office of deacons is.

Likewise from the [First] Epistle of Pope Clement, [to James, brother of the Lord]. Let the deacons of the Church be like the eyes of the bishop, wandering about and looking all around with modesty upon the acts of the whole Church, and examining more diligently whether they see anyone approaching a precipice and being near to sin, so that they may report these things to the bishop. And below: § 1. Let it be the care of the deacons to report to the bishop those things which pertain to the worship of the Church and its discipline.

[C. VII.]

Likewise in the same. But blessed Peter said that priests were the salt of the earth and the light of the world, teaching them to glorify God the Father in the splendor of their works, concerning whom the Lord says: "Blessed are you when men curse you," and the rest; and again: "You are the salt of the earth."

C. VIII. Those who are not governed by episcopal discipline are not to be held as clerics.

Likewise from the Council of Paris. By no reason are those to be held as clerics or priests who are governed under the discipline and foresight of no bishop. Ancient custom called such persons acephalous, that is, without a head.

[C. IX.]

Likewise, [from the Third Epistle of Clement]. Those who do not obey their bishops undoubtedly exist as guilty and reprobate. Moreover, those who gladly obey their teachers, who are rightly understood to be bishops, obtain from God the gift of the highest reward.

C. X. Those who do not obey their bishop are scandalized against God.

Likewise Anacletus, [epistle I]. Without doubt, he is scandalized against God who does not teach rightly, and he who scandalizes his bishop or priest.

C. XI. There ought to be seven deacons in each city.

Likewise Evaristus to all the Bishops. Deacons, who are seen to be, as it were, the eyes of the bishop, ought to be seven in each city. They are to guard the bishop as he preaches, lest he be harassed in any way by plotters, or be harmed by his own people, or the divine words be polluted or despised through detraction or plotting; but let the truth be fragrant with spiritual fervor, and let the peace preached by the lips accord with the will of the mind.

C. XII. On the same.

Likewise from the Council of Neocaesarea, [c. 14]. According to the rule there ought to be seven deacons, although the city be not great. But the authority of the rule is this: that the book of the Acts of the Apostles also indicates the same. Part III. GRATIAN. As is evident from the preceding authorities, deacons owe obedience to priests, just as priests also do to bishops. But deacons growing proud sought to be equated with priests, or rather to be preferred to them. Against their insolence the authorities of many issued forth, repressing their haughtiness and decreeing that they display fitting obedience to priests. Hence Pope Gelasius says, [in the epistle to the Bishops throughout Lucania, cc. 9 and 10]:

C. XIII. Let deacons claim for themselves none of those things which have been decreed for the first orders.

We establish that deacons observe their proper measure, nor do we permit them to attempt anything beyond the tenor assigned by the paternal canons, or to apply to their own ministry any of those things which antiquity properly decreed for the first orders. Let them not dare to baptize without a bishop or priest, unless perhaps, when the aforesaid orders are situated rather far away, extreme

necessity compels them. This is also frequently conceded to Christian laymen to do. § 1. Let them not have the right to exercise the prerogative of the sacred body in the sight of a bishop or priest, unless these are absent.

C. XIV. Let deacons recognize themselves to be inferior to priests.

Likewise in the Council of Nicaea, [c. 14, or 18]. It has come to the holy council that in certain places and cities deacons present the sacraments to priests. Neither rule nor custom has handed down that those who do not have the power of offering the sacrifice should present the body of Christ to those who offer it. But this also became known: that certain deacons even receive the sacraments before the bishops. Therefore let all these things be cut off, and let deacons remain within their measure, knowing that they are indeed the ministers of bishops, but are to be held inferior to priests. Therefore, in order after the priests, let them receive the grace of holy communion, with either the bishop or priest presenting it to them. Nor is a deacon permitted to sit in the midst of priests, because, if this occurs, it is proved to exist outside the rule. But if anyone after these determinations is unwilling to obey, he ought to cease from ministry.

C. XV. Let a deacon display honor to a priest, and let him himself be honored by inferiors.

Likewise from the Council of Laodicea, [c. 20]. A deacon ought not to sit in the presence of a priest, but let him sit at the priest's command. Likewise, however, let the deacon have honor from those who follow, that is, from subdeacons and from all clerics.

C. XVI. A deacon is not permitted to bless the chalice and give the bread.

Likewise from the same, [c. 25]. Deacons ought not to give the bread or bless the chalice.

C. XVII. Let deacons minister to priests just as they do to bishops.

Likewise from the [Fourth] Council of Carthage, in which Pope Zosimus participated through vicars, [c. 37]. Let deacons recognize that they are the ministers of the priest just as of the bishop.

[C. XVIII.] Likewise in the same, [c. 38]. In the presence of a priest, let a deacon, if necessity compels, distribute the Eucharist of the body of Christ to the people when commanded.

[C. XIX.]

Likewise in the same, [cc. 39, 40, and 41]. Let a deacon sit at the command of a priest in any place. Likewise, in an assembly of priests let a deacon speak when questioned. But let him use an alb only at the time of the oblation and reading.

C. XX. Let deacons recognize priests to be superior to themselves.

Likewise from the Fourth Council of Toledo, [c. 39]. Certain deacons erupt into such pride that they set themselves before priests and presume to stand first in the first choir, with the priests placed in the second choir. Therefore, so that they may acknowledge priests to be higher than themselves, let both these and those stand in both choirs. Part IV. GRATIAN. Deacons are not permitted to be shod with *compagi* without the permission of the Apostolic, just as any clerics are not conceded the use of

mappulae without his authority. Hence Gregory to John, Bishop of Syracuse, [book VII, epistle 28, indiction I]:

C. XXI. Without apostolic permission let deacons by no means presume to use *compagi*.

It has come to us that a deacon of the church of Catania had presumed to proceed shod with *compagi*. You recall well that until now this has been permitted to no one throughout the whole of Sicily except only the deacons of the church of Messina, to whom it is not doubted that this was once conceded by our predecessors. Therefore, because the daring of so great a temerity is not to be regarded lightly, let your fraternity inquire into this with all subtlety, so that it may be made known to us precisely whether he presumed this through himself or by someone's authority. For if we negligently omit those things which are evilly usurped, we open the way of transgression to others.

C. XXII. Clerics ought not to use *mappulae* without the permission of the Apostolic.

The same to John, Bishop of Ravenna, [book II, epistle 54, near the end]. But that which you wrote concerning the use of *mappulae* by your clergy has been vigorously opposed by our clerics. They say that this was never conceded to any other church whatsoever, that the clerics of Ravenna have not presumed any such thing either there or in the city of Rome with their knowledge, and that, if it had been attempted, no prejudice is generated for them from a furtive usurpation. Rather, even if this has been presumed in any church, they assert that what is presumed not by concession of the Roman Pontiff but by surreption alone is to be amended.

C. XXIII. Just as in ministry, so in administration, let a bishop not live without deacons.

Likewise Jerome to Rusticus, Bishop of Narbonne. Part V. The deacons are those whom we read in the Apocalypse to be the seven angels of the churches; they are the seven golden lampstands; they are the voices of the thunders. § 1. Illustrious in the exercise of virtues, endowed with humility, peaceful, humble, evangelizing peace, announcing good things, cutting off dissensions, quarrels, and scandals, teaching, speaking with God alone, thinking nothing at all of the world in the temple, saying to father and mother, "We do not know you," and not acknowledging their own sons. § 2. Without these a priest has the name but does not have the office. This one is called the minister of God, because it is written: "Greater is he who ministers than he to whom ministry is rendered." And just as there is ministration in the priest, so in the minister there is administration of the sacrament. § 3. Even priests, because of presumption, are not permitted to lift the chalice from the table of the Lord unless it has been handed to them by the deacons. § 4. For our almighty God so disposed all things that one who believed himself greater would be lesser, and one who seemed lesser would prove to be greater. Finally, ponder for yourself how true this is. Levites prepare the table of the Lord; Levites stand by priests when they bless the sacraments; Levites pray before priests, so that, even if a distinction of places is believed to exist in the world, at the altar of God bishops who are proud may see deacons placed before them. If they love humility, let the deacons also recognize themselves to be greater in that they are humble. Then at last, that we may have ears directed toward God, the deacon cries out; he preaches, he exhorts, he admonishes while the priests stand by. Do not regard lightly or negligently this voice which speaks and announces peace. It suffices that so much was conceded to

this order by the Lord, so that the priest may not seem to do and fulfill everything alone in the temple of God. And below: § 5. But now, from the time when avarice grew in the churches as in the Roman Empire, the law perished from the priest and vision from the prophet. Each one, through the power of the episcopal name which they unlawfully claimed for themselves without the Church, directs to his own uses everything which belongs to the Levites; and they claim for themselves not only that which was assigned, but take everything away from everyone. The unhappy clergy beg in the streets and, bound to servile work, ask public alms from anyone whatsoever. They are all the more despised by everyone because, wretchedly desolated, they are believed justly to have come to this disgrace. § 6. The bishop alone broods over the gifts; he alone uses the ministry; he alone claims all things for himself; he alone invades the shares of others; he alone kills everyone. § 7. Hence, because of the avarice of priests, hatreds often arise; hence bishops are accused by clerics; hence the beginning of litigation, hence the cause of detraction, hence the origin of crime. For if everyone in this visible world is commanded to possess something in such a way that he is content with his own possession alone and does not invade the property of others, does not take the field of a poor man, nor a vineyard, nor any beast of burden, nor servants, nor fruit, how much more ought one who presides over the Church of God so to preserve justice in all things that he claim for himself what he knows to be of his own right, not seize another's things, not touch another's things, make himself equal to the others, and, just as he does not live without them in ministry, so not live without them in administration? § 8. Certainly, as you yourself know, one who visibly invades another's right in this world is accused by the poor man and condemned by the judge. Thus in the Church of God, when anyone loses his stipends, he cries to the Lord and is heard by Christ, nor is the sentence of vengeance deferred if all things are not settled. For the moderation and piety of God seek only our return and desire that we be saved by his long goodness. If we are not converted, if we are stiff-necked, if we unlawfully persist in sins until death, God does not have mercy upon those who sin continually. Part VI. GRATIAN. In this chapter the avarice of priests is reproved, while the dignity or office of deacons is commended. But because, as was said above, deacons growing insolent thought that they should even be preferred to priests, Jerome writes against their haughtiness to the priest Evangelus, [epistle LXXXV]:

C. XXIV. Deacons ought to be subject to priests.

We read in Isaiah: "The foolish man speaks foolish things." I hear that someone has erupted into such madness that he placed deacons before priests, that is, bishops. For since the Apostle clearly teaches that those who are bishops are the same as priests, what ails the minister of tables and widows that, swollen with pride, he raises himself above those by whose prayers the body and blood of Christ are confected? Do you seek authority? Hear the testimony: "Paul and Timothy, servants of Jesus Christ, to all the saints who are at Philippi, with the bishops and deacons." Do you wish another example also? In the Acts of the Apostles Paul speaks thus to the priests of one church: "Take heed to yourselves and to the whole flock, in which the Holy Spirit has placed you as bishops to govern the Church of God, which he acquired by his blood." And lest anyone contentiously maintain that there were several bishops in one church, let him hear another testimony in which it is most manifestly declared and proved that the bishop and priest are the same: "For this reason I left you in Crete, that you might correct the things that were lacking and appoint priests throughout the cities, as I commanded you: if anyone is without crime, the husband of one wife, having faithful

children, not under accusation of luxury or insubordinate. For a bishop must be without crime, as a steward of God." And to Timothy: "Do not neglect the grace which was given to you through prophecy and through the imposition of the hands of the presbyterate." Peter also says in his first epistle: "I, a fellow priest and witness of the sufferings of Christ, and a participant in the future glory which is to be revealed, beseech the priests who are among you: govern the flock of Christ and exercise oversight, not from necessity but willingly according to God." This indeed is said more significantly in Greek, *episkopountes*, whence the name of bishop is also drawn. Do the testimonies of so many great men seem small to you? Let the trumpet of the Gospel sound, the son of thunder whom Jesus loved exceedingly, who drank the streams of doctrines from the breast of the Savior: "The priest to the elect lady and her children, whom I love in truth." And in another epistle: "The priest to the most beloved Gaius, whom I love in truth." § 1. But the fact that afterward one was elected to be set over the others was done as a remedy for schism, lest each person, drawing the Church of Christ to himself, rupture it. For even at Alexandria, from Mark the Evangelist down to the bishops Heraclas and Dionysius, the priests always elected one from among themselves and placed him in a higher grade, whom they called bishop, just as if an army were to make an emperor. But let the deacons choose from among themselves one whom they know to be industrious and call him archdeacon. For what, except ordination, does a bishop do which a priest does not do? Nor is the church of the city of Rome to be judged one thing and that of the whole world another. Both Gaul and Britain and Africa and Persia and the East and India and all the barbarian nations adore one Christ and observe one rule of truth. If authority is sought, the world is greater than the city. Wherever a bishop may be, whether at Rome, or at Gubbio, or at Constantinople, or at Reggio, or at Alexandria, or at Tanis, he is of the same merit and also of the same priesthood. The power of riches and the humility of poverty make no bishop either higher or lower; moreover, all are successors of the Apostles. § 2. But you say: How at Rome is a priest ordained upon the testimony of a deacon? Why do you bring forward to me the custom of one city? Why do you claim as laws of the Church the small number from which haughtiness arose? Everything that is rare is sought more. Among the Indians, pennyroyal is more precious than pepper. Scarcity makes deacons honorable; a multitude makes priests contemptible. Moreover, even in the church at Rome priests sit and deacons stand, although, as vices gradually multiply, in the bishop's absence we see deacons sitting among priests and giving blessings in the presence of priests at domestic banquets. Let those who do this learn that they do not act rightly; let them hear the Apostles: "It is not fitting that, leaving the word of God, we minister to tables." Let deacons know why they were established. Let them read the Acts of the Apostles; let them remember their condition. Priest and bishop: the one is a name of age, the other of dignity. Hence to Titus and Timothy there is speech concerning the ordination of a bishop and a deacon; concerning priests there is complete silence, because they are contained in the bishop and priest. One who is promoted is promoted from the lesser to the greater. Therefore either let a deacon be ordained from a priest, so that he may be proved greater than the priest, into which he grows from being lesser; or, if a priest is ordained from a deacon, let him know that he is greater than laymen but lesser than priests.

C. XXV. On the same.

Likewise Cyprian, [book of epistles, 9]. Our Lord Jesus Christ, our king and judge and lord, preserved honor for pontiffs and priests until the day of his Passion, although they preserved neither the fear of

God nor recognition of Christ. For when he had cleansed the leper, he said to him: "Go and show yourself to the priests, and offer the gift." The humble one taught us humility, still calling him a priest whom he knew to be sacrilegious. Likewise, subjected to suffering, when he had received a slap and it was said to him, "Do you answer the pontiff thus?" he spoke nothing insultingly against the person of the pontiff, but rather defended his innocence in this manner, saying: "If I have spoken badly, bear witness concerning the evil; but if well, why do you strike me?" All these things were done by him humbly and patiently so that we might have an example of humility and patience. For he taught that true priests are lawfully and fully to be honored, since he himself proved such toward false priests. § 1. But deacons ought to remember that the Lord chose the Apostles, that is, bishops and priests, while after the Lord's ascension into heaven the Apostles appointed deacons for themselves as ministers of their episcopate and of the Church. If we can dare anything against God, who makes bishops, then deacons, who are made by us, can also dare against us. Part VII. GRATIAN. But what is said concerning the inferiority of deacons is to be observed everywhere, unless a deacon holds the place either of his own patriarch or of his metropolitan. Hence it reads in the Sixth Synod, [c. 7]:

C. XXVI. A deacon is not to be preferred to priests unless he holds the place of his metropolitan.

We command that a deacon, although he be even in a dignity, that is, in any ecclesiastical office, not sit before a priest unless he holds the place of his own patriarch or metropolitan for some matter; for then he will be honored as holding that man's place. But if anyone presumes tyrannically to do this, let him be driven from his own grade and become last of all in his order.

Distinction XCIV

GRATIAN. Part I. Even to a subdeacon the supreme patriarch can commit his vicariate. Hence Symmachus says:

C. I. The apostolic Church commits its vicariate even to a subdeacon.

We have perceived it to be exceedingly necessary that, just as it was the judgment of our predecessors, so we commit all things to one and the same person, and that where we cannot be present, our authority be represented through him whom we command. Therefore, with God's aid, we have committed our vicariate within the province of Sicily to Peter, subdeacon of our see. For we cannot doubt the acts of one to whom, with God's aid, we are known to have committed the whole patrimony of our Church. Part II. GRATIAN. But whoever impedes a legate of the apostolic see is to be excommunicated until satisfaction. Hence Alexander, [Pope Alexander I, epistle II to all the Bishops]:

C. II. Let one who attempts to impede a legate of the apostolic see be excommunicated.

But if anyone impedes a legation, he turns aside the advancement not of one but of many; and just as he harms many, so he is to be reproved by many and deprived of the fellowship of the good. And because he impedes the cause of God and disturbs the state of the Church, he is therefore to be kept

from her thresholds. Accordingly, all are to beware of such a man, and he is not to be received into the communion of the faithful until satisfaction.

Part III. GRATIAN. Archdeacons also, although by their office they ought to investigate the life of clerics by diligent examination and report to the bishop the things which they find in need of correction, are nevertheless prohibited from exercising dominion over them and exacting tribute from them. Hence it reads in the Council of Chalon, [c. 15]:

C. III. Let archdeacons not exercise dominion over priests.

It has been said that in very many places archdeacons exercise a certain dominion over parish priests and exact tribute from them, something which pertains more to tyranny than to the form of rectitude. § 1. For if, according to the saying of the Apostle, bishops ought not to be lords over the clergy, but to be made a form for the flock from the heart, much less ought these men to do this. Accordingly, let them be content with regular disciplines and keep their proper measure; and let them strive to exercise throughout the parishes what is enjoined upon them by the bishops, presuming nothing through cupidity and avarice.

Distinction XCV

GRATIAN. Part I. But what commands above that priests obey bishops as subjects is not to be understood as if they were not permitted to celebrate the sacred mysteries in the presence of bishops —as, with episcopal haughtiness, certain persons wished to prohibit priests from doing—but because priests ought to obey pontiffs as sons obey parents. It is also conceded to them to touch the baptized with chrism. Hence Gregory writes to Januarius, Bishop of Cagliari, [book III, epistle 26, indiction XII]:

C. I. Where bishops are absent, let priests touch the baptized on their foreheads with chrism.

It has also come to us that certain persons were scandalized because we prohibited priests from touching with chrism those who have been baptized. We indeed acted according to the ancient usage of our Church. But if some are altogether grieved concerning this matter, where bishops are absent we concede that priests also ought to touch the baptized with chrism on their foreheads. GRATIAN. Above, to the contrary, Bishop Leo in the chapter "Although to Chorepiscopi," [D. LXVIII]:

C. II. Let priests not presume to strive beyond their measure.

Likewise Gelasius, [Pope, to the Bishops throughout Lucania, etc., epistle V, c. 8]. We prohibit priests from stretching beyond their measure or boldly assuming for themselves things owed to the episcopal summit; let them not seize for themselves the faculty of confecting chrism or of applying pontifical consignation.

GRATIAN. But this concession of Gregory is read to have been made once for calming scandal. The command of Leo and Gelasius, however, prevailed with practice approving it, unless perhaps the custom of certain persons has admitted this: that, in the absence of the bishop and when extreme necessity compels, priests, by the concession of Gregory, may anoint the baptized on their foreheads. But the prohibition of Leo and Gelasius is to be understood in the case when bishops are present or

when ultimate necessity does not compel. They are, however, permitted to anoint the sick with sanctified oil. Hence James says: "Is anyone among you sick? Let him bring in the priests of the Church, who are to pray over him, anointing him with oil, and the prayer of faith will save the sick man." Part II. § 1. But it is asked whether bishops are permitted to anoint the sick with the same oil, or whether anointing of this kind is to be conceded to the impenitent. Concerning these things Pope Innocent writes thus, [to Decentius, Bishop of Gubbio, epistle I, final chapter]:

C. III. A bishop is not prohibited from touching the sick with sanctified oil.

We see that it was superfluously added that there should be doubt concerning the bishop as to what it is not doubtful that priests are permitted to do. For priests were mentioned for this reason: because bishops, impeded by other occupations, cannot go to all the sick. Moreover, if the bishop either can or deems anyone worthy to be visited by him, he can without hesitation both bless and touch him with chrism, since it belongs to him to confect the chrism itself. This cannot be poured upon the impenitent because it is a kind of sacrament. For how is one kind believed able to be conceded to those to whom the other sacraments are denied? Therefore, most beloved brother, we have taken care to answer, as we were able, all these things which your affection wished to be expounded by us. Part III. GRATIAN. But let priests seek chrism from their own bishops for the sanctification of baptism. Hence in the Fourth Council of Carthage, [c. 36]:

C. IV. Chrism is to be sought from one's own bishop every year.

Let priests who govern churches throughout the dioceses seek chrism not from any bishops whatsoever but from their own, and not through a more junior cleric, but every year, either through themselves or through the one who keeps the sacristy, before the solemnity of Easter.

C. V. A priest is the same as a bishop, and bishops preside over priests by custom alone.

Likewise Jerome, on the epistle to Titus. Formerly a priest was the same as a bishop; and before factions arose in religion at the instigation of the devil and it was said among the peoples, "I am of Paul, I am of Apollo, but I am of Cephas," the churches were governed by the common counsel of the priests. But after each person thought that those whom he had baptized were his own, not Christ's, it was decreed throughout the whole world that one from among the priests be set over the others and the seeds of schisms be removed. And a little later: § 1. Therefore, just as priests know that by the custom of the Church they are subject to the one who has been set over them, so let bishops know that they are greater than priests more by custom than by the truth of the Lord's disposition, and that they ought to govern the Church in common.

C. VI. Priests are permitted to teach in the presence of bishops.

The same to Rusticus, Bishop of Narbonne, [*On the Seven Grades of the Church*]. Behold, I say that, while their bishops are present and standing by at the altar, priests can confect the sacraments. § 1. But because it is written, "Let priests be honored with a double honor, especially those who labor in the word of God," it is fitting for them to preach; it is useful to bless; it is appropriate to confirm; it is proper to give communion; it is necessary to visit the sick, to pray for the infirm, and to complete all the sacraments of God. § 2. Let no bishop be puffed up over this by envy of diabolical temptation or

be angry if priests sometimes exhort the people, if they preach in the churches, if, as was said, they bless the people. For to one denying these things to me I shall speak thus: let one who does not wish priests to do the things commanded by God say what is greater than Christ, or what can be preferred to his body or blood. If the priest consecrates Christ when he blesses the sacraments at the altar of God, ought he not to bless the people, he who does not fear to consecrate Christ? § 3. Concerning laymen and women, at your command, O most unjust priests, the priest of God loses the offices of blessing, loses the work of the tongue, does not have confidence to preach, is mutilated in every part of the virtues, has the name of priest alone, and does not retain the fullness and perfection which belong to his consecration. § 4. What honor of yours, I ask, is here, O priests, that you inflict the injury of a hump? For when diligence worthy of God is taken from pastors through power, a certain contagion and calamity grows in the flocks, and you procure losses for the Lord's patrimony while you wish alone to exercise power in the Church. § 5. From the beginning priests were commanded to be judges of affairs; priests ought to participate in the council of priests, because priests themselves also, as we read, are called bishops, according to what was said to a bishop: "Do not neglect the grace which was given to you through the imposition of the hands of the priest"; and elsewhere to the elders: "Who placed you as bishops to govern his Church." § 6. But proud priests hate this in the name of the presbyterate, who do not wish to be what Christ was—he who washed the feet of his disciples, who was baptized by John, although John proclaimed that he himself ought to be baptized by the Lord. I write this so that, if the error of the past time can no longer be recalled, at least now in the churches they may do what is done at Rome, what is done in Africa, what is done in the East, what is done in Spain, what is done in Britain, what is done in Gaul, what is done in all places where humility perseveres, what is done in heaven—which is greater—where their seats are read to be disposed.

C. VII. Let bishops and clerics mutually display honor to one another.

The same to Nepotian, [epistle II]. Be subject to your pontiff and love him as the parent of your soul. § 1. But let bishops also know that they are priests, not lords; let them honor clerics as clerics, so that honor may be rendered to the bishops themselves by the clerics. § 2. That saying of the orator Domitius is well known: "Why," he says, "should I hold you as prince when you do not hold me as senator?" § 3. Let us know that what Aaron and his sons are, this are the bishop and priests. § 4. There is one Lord, one temple; let there be one ministry. § 5. Let us always remember what the blessed Apostle Peter commanded the priests: "Feed the flock of the Lord which is among you, exercising oversight not under compulsion but willingly, according to God; neither for the sake of shameful gain but voluntarily; neither as lords over the clergy but being made a form for the flock from the heart, so that when the prince of shepherds appears, you may receive the unfading crown of glory." § 6. It is of the worst custom in certain churches for priests to be silent and not to speak in the presence of bishops, as if the bishops envied them or disdained to hear them. "And if something," as the Apostle Paul says, "is revealed to another who is sitting, let the first be silent." "A wise son is the glory of his father." Let the bishop rejoice in his judgment when he has chosen such priests.

C. VIII. Let priests not precede bishops, but accompany or follow them.

Likewise from the Council of Laodicea, [c. 56]. Priests ought not to enter before the entrance of the bishop and sit on the tribunals, but to enter with the bishop, unless perhaps the bishop is ill or it is

established that he is occupied on a journey.

C. IX. Let a bishop recognize himself not as the lord but as the colleague of priests.

Likewise from the Fourth Council of Carthage, [c. 34]. Let a bishop sitting in any place not permit a priest to stand.

[C. X.]

Likewise from the same, [c. 35]. In the church, in the assembly of priests, let a bishop sit in the higher place. But within the house let him recognize that he is the colleague of the priests.

C. XI. Without the command of the bishop, let a priest not sign infants.

Likewise from the Council of Pope Martin. In the presence of the bishop, let a priest not sign infants unless it has been commanded to him by the bishop.

[PALEA.

C. XII. On the same.

Likewise from the Council of Neocaesarea, c. 13. Rural priests cannot offer in the church of the city when the bishop or the priests of that city are present, nor give the consecrated bread and present the chalice. But if these truly are absent and the rural priests alone are called to make the offering, they ought to make it.]

Distinction XCVI

GRATIAN. But that decree of the Emperor Honorius which is read above to have been established concerning the election of the Supreme Pontiff is proved to be of no weight, since the faculty of disposing not only concerning orders but not even concerning ecclesiastical property is read ever to have been attributed to laymen. Hence whatever things are found to have been decreed by princes concerning orders or ecclesiastical property are shown to be of no authority. Hence Symmachus, Bishop of the catholic Church of the city of Rome, presiding in a Synod, said:

C. I. No faculty of disposing ecclesiastical property is left to laymen.

Your fraternity, having rightly pursued the ecclesiastical laws, under fear of divine judgment determined the things which were to be established and arrived at the summit of justice, since it sufficiently embraces all things and its fullness needs no addition, especially concerning the clerics whom love of domination has invaded and made reject the yoke of ecclesiastical discipline. § 1. It is difficult to relate their transgressions; nevertheless, I do not defer to make known to your venerable order one thing which comes to mind. Among other things, I report that Basilius of illustrious memory composed a certain document, as if from love of ecclesiastical property, in which no prelate of the Roman Church participated or subscribed, through whom it could have obtained lawful firmness. Therefore, lest I debate concerning that upon which your council can judge, let it be sought and brought into the midst, so that from its reading you may recognize what sort of substance it can have. The holy synod responded: “Let it be brought into the midst so that what sort it is may be

recognized." When he had said these things, the deacon Hormisdas recited: "When, in the Mausoleum which is beside blessed Peter the Apostle, the sublime and most eminent man Basilius, prefect of the praetorium and patrician, also acting in the place of the most excellent King Odoacer, had taken his seat, he said: 'Although it pertains to your zeal and religion that concord be preserved principally for the Church in the election of the episcopate, lest through occasion of the election the state of the city be called into doubt, nevertheless, by the admonition of the most blessed man our Pope Simplicius, which we ought always to have before our eyes, you remember that this was commanded to us under entreaty: that, because of that uproar and the loss of the venerable Church, if it should happen that he pass from this light, no election of anyone be celebrated without our consultation.'" When this had been read, Cresconius, bishop of the city of Todi, rising from the assembly, said: "Here let the holy synod ponder whether, with religious persons passed over, upon whom especially rests the care concerning so great a Pontiff, they can draw his election into their own power, something which is manifestly contrary to the canons." Likewise, the deacon Hormisdas read: "And lest the venerable Church sustain any confusion or loss, we marvel that, with us passed over, anything was attempted, since while our priest was surviving nothing ought to have been undertaken. Therefore, if it pleases your amplitude and holiness, let us preserve unharmed, with religious veneration, all things which concern the election of the future prelate, setting forth especially this law, which with the devotion of a Christian mind we sanction for ourselves and our heirs: that it never be permitted for an estate, whether rural or urban, or the ornaments or ministries which now belong to the churches, or which may come by any titles into the right of the churches, to be alienated under any title or contrivance by him who is now to be ordained prelate by common election or by those who follow in future ages. And whoever wishes to do this is to be judged ineffectual and void, and let there be anathema for the one doing it, consenting, and receiving." § 2. Maximus, bishop of the church of Blera, said: "Now let the holy synod deign to declare whether a layman was permitted to dictate an anathema against the ecclesiastical order, or whether a layman could pronounce anathema against a priest and establish contrary to the canons what did not belong to him. Say what seems right to you. Was a layman permitted to give law concerning me?" The holy synod said: "He was not permitted," and added: "Read what follows." The deacon Hormisdas read: "And let one who obtains an estate, whether rural or urban, belonging to ecclesiastical right know that he is protected by no law or prescription; but whether it is the one who alienated it or one succeeding him who, with a contrary will, attempts to retain an estate alienated in this way, let the one who obtained it restore it with its fruits." § 3. When he had read these things, Stephen, bishop of the church of Venosa, rising from the assembly, said: "Let it be read through." The deacon Hormisdas read: "It has also pleased us to afflict the heirs of the recipient with this penalty. In this matter no cleric is to have free faculty to contradict. For it is unjust and akin to sacrilege that the things which each person has conferred or certainly left to the venerable Church for the salvation and rest of his soul and for the sake of the poor should be transferred to another by those whom it especially befitted to preserve them. Certainly, whatever things in gems, gold or silver, and also garments, appear less suitable for the uses or adornment of the Church and cannot be preserved and endure for a long time are to be sold under a just valuation, and the expenditure is to benefit religion." § 4. When this had been read, Lawrence, bishop of the church of Milan, said: "That document could bind no Pontiff of the city of Rome, because laymen were not permitted to have any power of establishing things in the Church apart from the Roman Pope. The necessity of obeying remains for them, not the

authority of commanding, especially since neither did the Roman Pope subscribe, nor is the assent of any metropolitan according to the canons read in it." § 5. Peter, bishop of the church of Ravenna, said: "It is manifest that the document which has been published in our congregation has no force, because it neither accords with the canons and appears to have been conceived by a lay person, especially because no prelate of the apostolic see is shown to have participated in it or to have confirmed it by his own subscription." § 6. Eulalius, bishop of the church of Syracuse, said: "It is established by the most evident proofs that the document which has been recited in the priestly council is invalid: first, because it appears to have been made contrary to the rules of the Fathers by laymen, though religious—persons to whom no faculty of disposing anything concerning ecclesiastical resources is read ever to have been attributed; next, because it is shown to have been confirmed by the subscription of no prelate of the apostolic see. For if the holy Fathers sanctioned that whatever the priests of any province treat within their own boundaries in a council held without the authority of their metropolitan ought to be void, how much more is it not doubtful that what is known to have been presumed by laymen at the apostolic see while the prelate now exists—he who, by the merit of blessed Peter the Apostle, holds the primacy of the priesthood throughout the whole world and customarily bestows firmness upon synodal statutes—lacks force and can in no way be reckoned among ecclesiastical statutes, although some bishops consented who nevertheless could not inflict prejudice upon the Pontiff by whom they are proved to have been consecrated?" § 7. The holy synod said: "Although, according to the prosecution of our venerable brothers Lawrence, Peter, Eulalius, Cresconius, Maximus, and Stephen, it is not held uncertain among us that this document is of no weight, nevertheless, even if it could subsist by some reason, it was fitting that in the synodal assembly it be enervated by the provident sentence of your blessedness and reduced to voidness in every way, lest it remain as a precedent for any laymen, though religious or powerful, to presume in any city and in any manner to decree anything concerning ecclesiastical resources, the care of disposing which is taught to have been entrusted by God indisputably to priests alone." Hence in the sixth action of the Council of Chalcedon the Emperor Marcian said among other things:

C. II. Emperors ought to participate in a synod to confirm the faith, not to display power.

After the example of the most religious prince Constantine, we wish to participate in the synod to confirm the faith, not to display power, so that, when the truth has been found, the multitude drawn away by depraved doctrines may no longer be at discord.

[C. III.]

Likewise in the same, [sixth action, at the end]. There are certain chapters which we have reserved to you for the honor of your reverence, judging it becoming that these be regularly confirmed by you through a synod rather than sanctioned by our law.

C. IV. It is not fitting that emperors participate in a synodal assembly except where the faith is treated.

Likewise Pope Nicholas, [in the epistle to Emperor Michael which begins, "We had proposed"]. Where have you read that your predecessor emperors participated in synodal assemblies, except perhaps in those in which the faith was treated—the faith which is universal, which is common to all, which pertains not only to clerics but also to laymen and to absolutely all Christians?

C. V. Those who preside over human affairs cannot judge the prelates of divine affairs.

The same, [in the same epistle]. Finally, we are entirely ignorant how those who are permitted to preside only over human affairs, and not divine ones, presume to judge those through whom divine things are ministered.

C. VI. Let neither the emperor usurp the rights of the Pontiff nor the Pontiff the royal rights.

The same, [a little below]. When it came to the truth, neither did the emperor thereafter seize for himself the rights of the pontificate, nor did the Pontiff usurp the imperial name, because the one mediator of God and men, the man Christ Jesus, distinguished the offices of both powers by their proper acts and distinct dignities. He willed his own to be raised upward by medicinal humility, not to be plunged down again into hell by human pride, so that both Christian emperors would need Pontiffs for eternal life and Pontiffs would use imperial laws only for the course of temporal affairs, so that spiritual action would remain apart from carnal assaults, and one serving as a soldier of God would by no means entangle himself in secular affairs, and in turn he who was entangled in secular affairs would not seem to preside over divine things.

C. VII. A Pontiff can be neither loosed nor bound at all by secular power.

The same, [in the same epistle, with a few things interposed]. It is shown clearly enough that a Pontiff can be neither loosed nor bound at all by secular power, since it is established that he was called God by the pious Prince Constantine, whom we recalled far above, because it is manifest that God cannot be judged by men. But Theodosius the Younger, writing to the holy First Synod of Ephesus, also said: "Therefore Candidian, the most magnificent count of the valiant household troops, has been appointed to go to your most holy synod and in no way to participate in the questions or, rather, expositions which are to be made concerning pious dogmas. For it is unlawful that one who is not in the order of the most holy bishops involve himself in ecclesiastical deliberations." (And after a few things:) § 1. Therefore, when these things are found manifest, it appears that our fellow minister Ignatius could in no way have been altogether expelled by an imperial sentence alone. Because the assent of prelates also followed in his condemnation, it appears that this was perpetrated for the sake of flattery, not of lawful sanction.

C. VIII. An emperor ought not to judge the deeds of Pontiffs.

The same to Emperor Louis. It is narrated in the Scriptures that the Emperor Constantine said: "Truly, if I saw with my own eyes a priest of God, or any one of those who are clothed around with the monastic habit, sinning, I would unfold my cloak and cover him, lest he be seen by anyone." In these things, therefore, most desired son, you are necessarily admonished that, just as you are seen to be made equal to him in faith, religion, and parity of honor, so you should likewise yearn to be equated in humility and devotion, so that you may be found in nothing inferior to him, but superior after the examples—you who displayed yourself as such before examples of this kind altogether. But we have indeed said these things wishing to render you cautious, so that, if it happens that you hear anything concerning the priests of the Lord, who are rightly called fathers, which introduces confusion into pious minds, you may imitate the modest, not the shameless, sons of Noah, and cover

your father's shame thereafter, so that, with the Lord governing, you may deserve to be filled with an abundant blessing, as they also were.

C. IX. Priests are reckoned the fathers and teachers of kings and princes.

Likewise from the epistle of Gregory [VII] to Herman, Bishop of Metz, [book VIII, epistle 21]. Who doubts that the priests of Christ are reckoned the fathers and teachers of kings, princes, and all the faithful? Is it not known to be of a wretched madness if a son attempts to subjugate his father, or a disciple his teacher, to himself, and to subject by unjust obligations to his power the one by whom he believes that he himself can be bound and loosed not only on earth but also in heaven?

C. X. The sacred authority of Pontiffs and the royal power govern the rudders of this world.

Likewise Pope Gelasius to Emperor Anastasius. There are indeed two things, august Emperor, by which this world is principally governed: the sacred authority of Pontiffs and the royal power. Among these, the burden of priests is so much heavier because they will have to render an account at the divine examination even for the kings of men themselves. And after a few things: § 1. Therefore know that amid these things you depend upon their judgment, not that they can be brought back to your will. § 2. Supported by such institutions and such authorities, many Pontiffs excommunicated some kings and some emperors. For if a particular example concerning the persons of princes is sought, blessed Pope Innocent excommunicated the Emperor Arcadius because he consented that Saint John Chrysostom be driven from his see. Blessed Ambrose also, though holy yet not bishop of the universal Church, excluded the Emperor Theodosius the Great from the church by excommunicating him for a fault which did not appear so grave to other priests. In his writings he also shows that gold is not so much more precious than lead as the priestly order is higher than royal power, writing in this manner near the beginning of his *Pastoral*: "The honor and sublimity of a bishop, brothers, can be equated by no comparisons. If you compare it to the splendor of kings and the diadem of princes, it will be far more inferior than if you compare the metal of lead to the splendor of gold, since indeed you see the necks of kings and princes submitted to the knees of priests, and, after kissing their right hand, they trust that they are joined in their prayers."

C. XI. Emperors ought to be subject to Pontiffs, not preside over them.

Likewise John. If the emperor is catholic—with his peace preserved as we say it—he is a son, not a prelate of the Church. Concerning what pertains to religion, it befits him to learn, not to teach. He has the privileges of his power which he has divinely obtained for administering public laws, and, not ungrateful for his benefits, let him usurp nothing against the disposition of the heavenly order. For God willed the things of the Church which are to be disposed to pertain to priests, not to the powers of the age, which, if they are faithful, he willed to be subject to the priests of his Church. Let him not claim for himself another's right and the ministry which was deputed to another, lest he strive to be broken away from him by whom all things were established and seem to fight against the benefits of him from whom he obtained his own power. Almighty God willed the clerics and priests of the Christian religion to be ordained, examined, and received when returning from error not by public laws or the powers of the age but by pontiffs and priests. Christian emperors ought to subject their executions to ecclesiastical prelates, not prefer them.

[PALEA.

C. XII. On the same.

Likewise Gelasius to the Eastern Bishops. Never have judgments concerning pontiffs been made except by the Church; it does not belong to human laws to pronounce sentence concerning such men apart from the pontiffs principally established in the Church. Christian princes are accustomed to obey the decrees of the Church, not to set their own power before them. The prince is accustomed to submit his head to bishops, not to judge concerning their heads.]

[PALEA.

C. XIII. On the same.

The Emperor Constantine conceded the crown and every royal dignity in the city of Rome, in Italy, and in the western regions to the Apostolic. For in the acts of blessed Sylvester—which blessed Pope Gelasius recalls are read by catholics in a council of seventy bishops, and which he says many churches imitate by ancient usage—it reads thus:]

[PALEA.

C. XIV. On the same.

On the fourth day of his baptism the Emperor Constantine conferred a privilege upon the Pontiff of the Roman Church, that throughout the whole Roman world priests should hold him as their head just as judges hold the king. In that privilege it reads thus among other things: "We have judged it useful, together with all our satraps, the whole senate, my nobles, and all the people subject to the empire of Roman glory, that, just as blessed Peter is seen to have been constituted on earth as vicar of the Son of God, so too the Pontiffs who exercise the vicariate of that prince of the Apostles should obtain from us and our empire the power of a principate greater than the clemency of our earthly imperial serenity is seen to have, choosing that prince of the Apostles himself and his vicars to be our firm patrons with God. And just as our earthly imperial power, so we have decreed that his sacrosanct Roman Church be reverently honored and that the most sacred see of blessed Peter be gloriously exalted above our empire and earthly throne, bestowing upon it power, the dignity of glory, vigor, and imperial honor. And decreeing, we sanction that it hold the principate both over the four principal sees—Alexandria, Antioch, Jerusalem, and Constantinople—and also over all the churches of God in the whole world; and that the Pontiff who for the time being presides over that sacrosanct Roman Church exist as higher than and prince of all the priests of the whole world; and that whatever things are to be procured for the worship of God or the stability of the faith of Christians be disposed by his judgment." And below: § 1. For the continuation of the lamps we have conferred landed estates upon the churches of the blessed Apostles Peter and Paul and enriched them with diverse property; and by our sacred imperial command we have granted these to him by our generosity both in the East and in the West and also in the northern and southern region, namely in Judea, Greece, Asia, Thrace, Africa and Italy, and in diverse islands, entirely upon this condition: that all things be disposed through the hands of our most blessed father Sylvester, the Supreme Pontiff, and his successors. And below: § 2. To blessed Sylvester, our father and Supreme Pontiff and Pope of the universal city of Rome, and to all his successor Pontiffs who will sit upon the see of blessed Peter until the end of the world, from the present we hand over our imperial Lateran palace, then the diadem, namely the crown from our head,

together with the *phrygium*, and also the superhumeral, namely the strap which is accustomed to encircle the imperial neck; indeed also the purple cloak and the scarlet tunic and all the imperial garments; and also the dignity of the presiding imperial cavalrymen, likewise conferring the imperial scepters together with all the standards and banners and the diverse imperial ornaments and the whole procession of the imperial summit and the glory of our power. § 3. But we sanction that the most reverend men, the clerics serving that same sacrosanct Roman Church in diverse orders, have that summit of singularity, power, and preeminence by which our most ample senate is seen to be adorned with glory, that is, that they be made patricians and consuls; and we promulgate that they be adorned also with the other imperial dignities. And just as the imperial soldiery is adorned, so we decree that the clergy of the holy Roman Church be adorned. And just as imperial power is adorned by diverse offices—namely chamberlains, doorkeepers, and all the guards—so we will that the holy Roman Church be adorned. And that the pontifical splendor may shine most fully, we also decree this: that the horses of the clerics of that holy Roman Church be adorned with maniples and linens, that is, with the brightest white color, and that they ride thus. And just as our senate uses shoes with *udones*, that is, made splendid with white linen, so let the clerics also use them, so that earthly as well as heavenly things may be adorned to the praise of God. § 4. But before all things we grant license to our most holy father Sylvester himself and his successors by our edict, so that whomever, being favorably disposed, he wishes by his own counsel to make a cleric and number among the company of religious clerics, no one among all may presume to act proudly against it. § 5. Accordingly, we have also decreed this: that he and his successors ought to use the diadem, namely the crown which we conceded to him from our head, made from the purest gold and precious gems, and to wear it upon the head to the praise of God for the honor of blessed Peter. But because the most blessed Pope himself did not at all suffer that golden crown to be used over the crown of clerical ordination which he bears for the glory of blessed Peter, with our own hands we placed upon his most sacred head the *phrygium*, splendid with a shining white color and signifying the Lord's resurrection; and, holding the bridle of his horse out of reverence for blessed Peter, we performed for him the office of strator, establishing that all his successors use that same *phrygium* singularly in processions in imitation of our empire. § 6. Hence, so that the pontifical summit may not become contemptible but rather be adorned with glory and power beyond the dignity of the earthly empire, behold: we hand over and relinquish to our aforesaid most blessed Pontiff Sylvester, universal Pope, both our palace, as was said before, and the city of Rome and all the provinces, places, and cities of Italy and of the western regions; and by this our divine and pragmatic constitution we decree that they are to be disposed by him and his successors, and we grant that they remain under the right of the holy Roman Church. § 7. Hence we have perceived it fitting that our empire and royal power be transferred to the eastern regions, and that in an excellent place in the province of Byzantium a city be built in our name and our empire be established there, because where the principate of priests and the head of the Christian religion has been established by the heavenly Emperor, it is not just that the earthly emperor have power there. § 8. But all these things which we have established and confirmed by this our sacred imperial command and by other divine decrees, we decree to remain inviolate and unshaken until the end of the world. Hence, before the living God who commanded us to reign and before his terrible judgment, by this our imperial constitution we adjure all our successor emperors, all the nobles, the satraps also, the most ample senate, and the whole people subject to our empire throughout the whole world, now and hereafter in all future times: that none of them is permitted in

any manner either to infringe these things or to tear them away in anything. But if anyone, which we do not believe, proves to be a violator or contemner in this, let him be bound under eternal condemnations; let him experience the holy princes of the Apostles of God, Peter and Paul, as contrary to him in the present and future life; and, burned in the lowest hell with the devil, let him perish with all the impious. Confirming the page of this our imperial decree with our own hands, we placed it upon the venerable body of blessed Peter, prince of the Apostles. Given at Rome on the third day before the Kalends of April, in the fourth consulship of our Lord Flavius Constantine Augustus and that of Gallicanus, most illustrious man."] C. XV. Imperial authority does not change the measure of religious administration. Likewise Gelasius, [to the Bishops of Dardania]. Just as a city, though small, does not diminish the prerogative of the present kingdom, so the imperial presence does not change the measure of religious administration. And below: § 1. It has always been effected that judgments concerning priests proceed from a priestly council. For Pontiffs of whatever kind, even if they transgress through human error occurring, yet in no way against religion, are seen in no way able to be struck by secular power.

C. XVI. It belongs to a good prince to restore shattered churches, not to persecute Pontiffs.

Likewise Pope Marcellus to Maxentius. It belongs to a good and religious prince to restore shattered and torn churches, to build new ones, and to honor and protect the priests of God. Hence we read that the holy Apostles and their successors, constituted under divine adjuration, commanded that persecutions ought not to be made, disturbances not inflicted, those laboring in the Lord's field not envied, and the stewards of the eternal King not expelled.

Distinction XCVII

GRATIAN. Part I. By this chapter it is openly shown that neither the emperor nor any layman is permitted to decree anything concerning either the election of the Pontiff or ecclesiastical property. But whatever things are established by them are to be held as not done unless they have been strengthened by the subscription of the Roman Pontiff. Hence that decree of the Emperor Honorius, as was said above, appears vain because he attempted to decree concerning the election of the Supreme Pontiff contrary to the authority of the sacred canons. But, as is held from the same chapter, at the prayers of the Church the emperor can decree against presumptuous persons, as emperors are once read to have decreed for the defense of the faith that heretics should possess nothing in the name of the Church. But when they are not invited by her, they have no faculty to dispose anything concerning ecclesiastical property. The Emperor Honorius, however, not by his own authority but at the supplication of blessed Boniface, took care to provide for ecclesiastical quiet and punish the ambition of the contenders. Hence the same Bishop Boniface sent a letter of supplication to the Emperor Honorius, saying:

C. I. The letter of Boniface to the Emperor Honorius.

Care for my Church, to which our God deputed my priesthood while you govern human affairs, constrains us, lest we be judged absent before the ears of the most Christian prince from its causes, although I am still detained by bodily infirmity, because of the assemblies which are agitated by all the priests and clerics and by disturbances of the Christian people. For if it should happen otherwise

than it ought, not you who compose all things with equitable moderation, but we through our silent idleness will seem to have admitted what can overthrow the quiet of the city and the peace of the Church. For since, with the Lord favoring, as a worshiper of the divine religion you provide for human affairs, it will be our fault if under your glory—which it is certain has always favored divine affairs with a more inclined spirit—that is not guarded by firm and stable law which obtained through the course of so many years even under those princes whom no care for our religion constrained: namely, that lawful things be preserved and, under the rule of your clemency, things which are unlawful be feared in no way. § 1. For the Church herself, most Christian Emperor, addresses your devotion, indeed through my speech but with her own venerable affection. Christ our God, the ruler of your faith and governor of your empire, preserves her for himself alone as a betrothed and untouched virgin, so that you may not suffer any waves of plotting storms to be dashed against her or her tranquil face to be disturbed by the swelling of an unaccustomed tempest, most glorious and tranquil Emperor, ever Augustus. She herself, who is betrothed to one yet is your mother, the Church, addresses your piety through the legation which she committed to her priests, and recalls past and present things. While you rule most religiously, she says, the people are now secure, as faithful to God as to you, a Christian prince. Behold, amid her mysteries and amid her prayers, which she renders for the felicity of your empire, with Saint Peter as witness before whom and concerning whose see the matter is treated, she cries out with solicitous voices for the observance of religion. Prayer is mingled with solicitous petition, lest discord, once torn loose while the accustomed tempter secretly solicits these men toward diverse things, rend them apart. Mother Church would be distressed by more things, most Christian prince, unless her causes were secure with you, and unless in the oppressions of idols and the correction of heretics she had conquered through your faith, with divine worship always flourishing together with the empire. § 2. She has as a pious refuge the mind of your clemency, joined with veneration of her religion, since you do whatever may profit her. Confer with my brothers and fellow priests, most approved men sent as legates by me and by all who constitute the Church; while they prosecute the cause of sacred religion, we pray that in the city of your clemency, with that spirit by which you grant petitions, you consult for the state of the universal Church and establish it in perpetuity.

C. II. The rescript of Honorius to Pope Boniface.

Victor Honorius, illustrious, triumphant, ever Augustus, to the holy and venerable Boniface, Pope of the eternal city. We received the writings of your blessedness with the due rejoicing of reverence, and, when they had been read, we gave the greatest thanks to almighty God because we learned that, after a long infirmity, your holiness had been restored to the desired health. And therefore, as the venerable men return, we mark our joy by the attestation of sacred letters and ask that your apostolate deign to bestow its zeal and prayer in daily prayers for our health and empire. But know that it has sufficiently pleased our piety that your holiness is solicitous concerning the disturbance of the churches and people. So that it cannot happen by any reason, our clemency believes that sufficient provision has been made. Finally, with your blessedness proclaiming it, we will that this come to the knowledge of all clerics: that, if by human lot anything should perhaps happen to your religious person—which we do not desire—all are to know that they must cease from ambitions. And if two contrary to divine law, etc., as above. And below: § 1. Hence this is to be observed: that all preserve a tranquil mind and peaceful spirits from the admonition of our serenity, and that they not

attempt to try anything seditious through conspiracies, since it is certain that the efforts of neither party will profit it. Part II. GRATIAN. It is not the custom of the Roman Church to receive a legation from anywhere without sealed letters.

C. III. The Roman Church is not accustomed to receive a legation from anywhere without sealed letters.

The most noble and vigorous man, the legate of your sublimity, although he brought no letter from you to our pontificate according to custom, and although it has never been the custom of the apostolic see to receive a legation from anywhere without sealed letters, nevertheless, honoring you in him and recognizing his gravity and the truthful assertions of his words, we both received him as was fitting and believed him as was honorable.

Distinction XCVIII

GRATIAN. What things are to be observed concerning those to be ordained, and what things are diligently to be considered in their election, have been shown by the authorities of many. But because the truth of the matter is sometimes obscured by a change of province, it was decreed by the sacred canons that strangers are not to be ordained unless they have been commended by the written attestations of five or more of their own bishops.

Hence Pope Sylvester, presiding in a general synod, said:

C. I. Let no one receive a transmarine man into the clergy unless he is designated by the letters of five bishops.

Let no one among us for any reason receive a transmarine man into a grade of the clergy unless he is designated by written attestations of five bishops.

C. II. On the same.

Likewise Anastasius [I], Bishop of the city of Rome, to all the Bishops, [epistle I, c. 2]. Let no one receive transmarine men into the honor of the clergy unless they have been designated by written attestations of five or more bishops, because many things customarily happen through surreption.

C. III. On the same.

Likewise Gregory, prelate of the Roman Church, to the Bishop of Squillace, [book II, epistle 25]. By no reason are you to receive indiscriminately Africans and unknown strangers seeking ecclesiastical orders, because some among the Africans are Manichaeans and others have been rebaptized; but very many strangers constituted in the lesser orders have often been proved to have pretended higher honors concerning themselves.

C. IV. Those who have been baptized abroad are not to be promoted to the clergy.

Likewise from the Council of Elvira, [c. 24]. Concerning all who have been baptized abroad, because their life is not at all known, it pleased the council that they are not to be promoted to the clergy in foreign provinces.

Distinction XCIX

GRATIAN. Part I. But concerning primates, of whom we made mention above, it is asked what grade they hold in the Church, whether they differ in anything from patriarchs, and what obedience archbishops owe them. Primates and patriarchs are of diverse names but of the same office. Whenever it is necessary, bishops appeal from archbishops to primates, but it is not permitted to appeal from primates to archbishops. Archbishops also owe obedience to primates in all things which have justly been commanded to them by the primates. Hence Pope Anacletus says, [to the Bishops of Italy, epistle II]:

C. I. What obedience is to be displayed to primates.

For the most part, the provinces were divided a long time before the coming of Christ, and afterward that division was renewed by the Apostles and blessed Clement our predecessor. And in the capitals of the provinces, where formerly there were the primates of secular law and the first judicial power—to whom those dwelling throughout the remaining cities fled whenever it was necessary for them, when they could not flee to the court of the emperors or kings or were not permitted to do so, because of their oppressions or injustices, and appealed to them whenever there was need, as was commanded in their law—the divine and ecclesiastical laws likewise commanded that in those same cities or places our patriarchs or primates, who keep one form although their names are diverse, be placed and exist, to whom bishops might flee if it were necessary and whom they might appeal to, and that these should enjoy the name of primacy. But the remaining metropolitan cities which had lesser judges—although they were greater than counts—were to have their own metropolitans, who would justly obey the aforesaid primates, as was also formerly ordained in the laws of the age, and who would enjoy not the name of primates but that either of metropolitans or archbishops.

C. II. Let none be called primates except those who hold the first sees.

Likewise Anicetus, [to the Bishops of Gaul]. Part II. Let no archbishops be called primates except those who hold the first sees, whose bishops the Apostles and their successors regularly established to be patriarchs or primates, unless some nation is thereafter converted to the faith for which it is necessary, because of its multitude, that a primate be established. Let the others who hold other metropolises be named metropolitans.

C. III. Let the bishop of the first see not be called prince of the priests or supreme priest.

Likewise from the African Council, [c. 6]. Let the bishop of the first see not be called prince of the priests, or supreme priest, or anything of this kind, but only bishop of the first see. Part II. But not even the Roman Pontiff is to be called universal. Hence Pope Pelagius to all the Bishops:

C. IV. Not even the Roman Pontiff is to be called universal.

Let none of the patriarchs ever use the title of universality, because, if one patriarch is called universal, the name of patriarch is derogated from the others. But far be this from the faithful: that anyone should wish to seize for himself that from which he may seem to diminish the honor of his brothers in however small a part. Wherefore, let your charity never name anyone universal in its letters, lest it take away what is owed to itself when it offers undue honor to another.

C. V. On the same.

Likewise Gregory to Eulogius, Patriarch of Alexandria, [book VII, epistle 30, indiction 1]. Behold, in the preface of the letter which you directed to me—the very man who prohibited it—you took care to impress a word of proud appellation, calling me universal Pope. I ask that your most sweet holiness do this to me no more, because what is furnished to another beyond what reason demands is taken away from you. I do not seek to prosper through words but through conduct, nor do I reckon as honor that in which I know my brothers lose their honor. For my honor is that of the universal Church; my honor is the sound strength of my brothers. Then I am honored, when the honor owed to each and every one is not denied. For if your holiness calls me universal Pope, it denies itself to be that which it confesses me to be universally. But far be this; let words which inflate unity and wound charity depart.

Distinction C

GRATIAN. Part I. Neither an archbishop, primate, nor patriarch is permitted to ordain bishops before receiving the pallium. This is given to be understood from the authority of Pope Pelagius, although less evidently. For Pope Pelagius says:

C. I. Let every metropolitan strive within three months to expound his faith and request the pallium from the Roman Church.

Because certain metropolitans, refusing to expound their faith to the holy apostolic see according to ancient custom, neither seek nor receive the use of the pallium, and through this the consecration of bishops for widowed churches is prolonged not without danger, it has pleased us that whichever metropolitan does not send to the apostolic see within three months of his consecration to expound his faith and receive the pallium is to lack the dignity committed to him; and let there be license for other metropolitans, after a second and third admonition, to assist widowed churches by ordaining a bishop with the counsel of the Roman Pontiff. § 1. But if it has resulted from the negligence of the bishop to be consecrated that the church remains widowed beyond three months, let him be deprived of communion until he either yields the place or does not defer to offer himself for consecration. But if through his negligence he keeps the church widowed beyond five months, let him receive the gift of consecration neither there nor elsewhere; rather, let him yield at the judgment of his metropolitan.

C. II. Let the honor of the pallium not be given unless the merits of the causes demand it and to one petitioning strongly.

Likewise Pope Gregory to Queen Brunhild, [book VII, epistle 5]. Part II. Ancient custom has maintained that the honor of the pallium ought not to be given unless the merits of the causes demand it and to one petitioning strongly.

[PALEA.

C. III. On the same.

The same to John, Bishop of the Corinthians, book IV, epistle 55. Your holiness knows that formerly the pallium was not given unless a payment had been made. Because this was unfitting, after a council had been held before the body of blessed Peter, prince of the Apostles, we prohibited under strict interdiction that anything be received either for this or for ordinations. Therefore it is necessary

that, neither through payment nor through favor or the supplication of certain persons, you consent to or permit anyone to be brought to sacred orders.] Part III. GRATIAN. But the merits of the causes are to be understood so that both the one who petitions deserves to receive, and that he first confirm the profession of his faith by an oath and likewise give assurance that he will obey apostolic decrees and synodal statutes. But no metropolitan will be permitted to use the pallium except on fixed days and within the church at the solemnities of the masses. Hence Bishop John to Willibert, Bishop of Cologne:

C. IV. The pallium ought not to be given except after the customary profession of faith.

We have been unable now to confer upon you the desired pallium because we found the document of your faith to contain less than it ought, since, namely, you made no mention in it according to custom of the holy universal synods in which the symbol of our faith is contained, nor of the constitutions of the decretal Roman Pontiffs; nor had you secured it by your own subscription, nor sent anyone who would confirm it by an oath.

C. V. Let one who desires to receive the pallium first promise to remove unlawful things.

Likewise Gregory to Aregius, Bishop of the Franks, [book VII, epistle III]. We will that your holiness participate in that synod which we decreed is to be assembled against the simoniacal heresy through our brother and fellow bishop Syagrius, and that the pallium which we transmitted be given to that same brother upon this condition: if he first promises that by the determination of the synod he will remove from the holy Church the unlawful things which we prohibited. Concerning that synod we will that your fraternity, by dispatching writings, announce the whole order to us in detail, so that he himself, whose holiness is exceedingly well tested by us, may render us more certain concerning all things.

C. VI. An archbishop is permitted to use the pallium only at the solemnities of the masses.

The same to Vigilius, Bishop of Arles, [book IV, epistle 51]. Part IV. We have transmitted the pallium to you, which your fraternity is to use within the church only at the solemnities of the masses.

[PALEA.

C. VII. On the same.

The same to John, Bishop of Ravenna, book II, epistle 54, indiction II. It is not a long interval of time since certain things concerning your fraternity were reported to us, concerning which we remember that, when Castorius, notary of the holy Church over which we preside by God's authority, came there, we indicated our mind to you in detail. For it had come to us that certain things were done in your church contrary to the path of custom and humility, which alone, as you well know, is the exaltation of priestly office. If your wisdom had received these things meekly or with episcopal zeal, it ought not to have been inflamed concerning them, but it was fitting that you correct these same things with thanksgiving.]

C. VIII. On the same.

The same to John, Bishop of Ravenna, [in the same epistle]. It is contrary to ecclesiastical custom if even an unjust correction is not borne most patiently—which be far from us. And below: § 1. We do not think this unknown to you, most beloved brother: that it is heard concerning almost no metropolitan in any regions of the world that he claimed for himself the use of the pallium outside the time of the masses. And that you know well this custom of the universal Church you signified to us by your most manifest letters, with which you transmitted to us, attached beneath, the precept of our predecessor Pope John of blessed memory, containing that all the customs conceded to you and your church by the privilege of our predecessors ought to be preserved. Therefore you confess that the custom of the universal Church is otherwise, since you claim by privilege those things which you perform. Therefore, as we judge, no doubt can remain for us in this matter. For either the custom of all metropolitans is also to be observed by your fraternity; or, if you say that something was especially conceded to your church by former Pontiffs of the city of Rome, a precept showing that these things were conceded to the church of Ravenna ought to be produced by you. But if this is not shown, it remains that, since you claim to do such things neither by universal custom nor by privilege, you prove that you usurped what you did. And below: § 2. Perhaps those unbecoming in conduct wish to be adorned by the pallium, though nothing shines more splendidly upon an episcopal neck than humility. Therefore, if your fraternity has proposed with a steadfast mind to defend its honors for itself by any arguments, it must either follow the universal usage from the unwritten custom or protect itself by privileges from a written instrument. But if finally there is neither of these, we are unwilling that you furnish to the other metropolitans an example of this presumption. Part V. GRATIAN. Privileges also ought always to be conceded together with the use of the pallium. Hence the same Gregory to Syagrius, Bishop of Autun, [book VII, epistle 112]:

C. IX. On the same.

The order of reason altogether admonishes us that we ought to grant certain privileges together with the use of the pallium. But because, together with an increase of honor, the care of solicitude also ought to increase, so that the ornaments of action may accord with the cultivation of garments, it is fitting that your fraternity exercise itself more earnestly in all pursuits and be vigilant concerning the acts of its subjects.

C. X. The use of the pallium is conceded, and ancient privileges are renewed.

The same to John, Bishop of First Justiniana in Illyricum, [book IV, epistle 15]. We have transmitted the pallium to you according to custom, and by renewed repetition we decree that you exercise the vicariate of the apostolic see.

C. XI. On the same.

The same to the Bishops of Epirus, [book V, epistle 7, indiction 14]. The notification of your writings, most beloved brothers, disclosed that Andrew, bishop of the city of Nicomedia, has by God's favor been solemnly ordained. Know that we have directed the pallium to him and conceded all the privileges which our predecessors conferred upon his predecessors.

Distinction CI

GRATIAN. But in one province there ought not to be two metropolitans, as was established in the Council of Chalcedon, [c. 12]:

C. I. Two metropolitans cannot exist in one and the same province.

It has come to us that certain persons, seeking power contrary to ecclesiastical ordinances, divide one province into two by a sacred pragmatic rescript, and from this two metropolitan bishops are found to exist in one and the same province. Therefore the holy synod established that henceforth nothing of this kind is to be attempted by any bishop, but that those who attempt any such thing are to fall from their own grade. GRATIAN. Thus far we have treated the election and ordination of clerics. Now let us pass to the ordinations of simoniacs; and so that it may readily be clear what the authority of the holy Fathers decreed concerning this heresy, let a case be brought into the midst whose matter contains both those knowingly ordained by simoniacs, those unknowingly consecrated by simoniacs, and ordinations which are made through money.

Part II

SECOND PART OF THE DECRETUM

Causa I

GRATIAN. A certain man who had a son offered him to a very wealthy monastery. When ten pounds were demanded by the abbot and the brothers, he paid them so that his son might be received, the son himself, however, being unaware of this by reason of the privilege of his age. The boy grew, and through the successive stages of time and offices arrived at manhood and the grade of the priesthood. Thereafter, with his merits supporting him, he was elected bishop, service and paternal entreaties intervening; and, money also having been given to one of the archbishop's counselors, he was consecrated a prelate, unaware of his father's service and of the money offered. But as time proceeded, he ordained some persons for money, while to certain others he gave the priestly blessing gratuitously. At last, accused and convicted before his metropolitan, he received a sentence of condemnation against himself. (Q. I.) Here it is first asked whether it is a sin to buy spiritual things. (Q. II.) Second, whether money is to be demanded for entrance into a church, or, if demanded, whether it is to be paid. (Q. III.) Third, whether to buy entrance into a church or prebends is simoniacal. (Q. IV.) Fourth, whether this man is guilty of the crime that his father committed without his knowledge. (Q. V.) Fifth, whether he is permitted to remain in the church or to exercise that ordination which he obtained by his father's money. (Q. VI.) Sixth, whether those who, in ignorance, were ordained by him when he was already a simoniac are to be cast out or not. (Q. VII.) Seventh, if, upon renouncing his heresy, he is to be received in the episcopal dignity or not.

Question I

GRATIAN. Part I. That it is a sin to buy spiritual things is proved by the authorities of many. For Pope Leo says:

C. I. Simoniacs do not bestow the grace which they seek to sell.

If grace is not given or received gratuitously, it is not grace. But simoniacs do not receive gratuitously; therefore they do not receive the grace which operates especially in ecclesiastical orders. But if they receive it, they do not have it; and if they do not have it, they can give it to no one, either gratuitously or non-gratuitously. What, then, do they give? Surely that which they have. But what do they have? Certainly the spirit of falsehood. How do we prove this? Because if the Spirit of truth—according to the testimony of the Truth itself, from whom it proceeds—is received gratuitously, beyond doubt that which is not received gratuitously is proved to be the spirit of falsehood.

C. II. Whoever is ordained simoniacally is called a priest in vain.

Likewise Gregory to Syagrius, Bishop of Autun, [book VII, epistle 110]. Whoever strives to receive holy order by the giving of a price is not a priest, but vainly desires merely to be called one.

C. III. Let one who obtains a church through money be stripped of honor.

Likewise in the Register. If a priest has obtained a church through money, let him not only be deprived of the church but also be stripped of the honor of the priesthood, because none of the faithful is ignorant that to sell or buy the altar, tithes, and the Holy Spirit is the simoniacal heresy.

[C. IV.]

The same, [Gregory I, the aforesaid epistle 110, book VII]. The blessing is converted into a curse for the one who is promoted so that he may become a heretic.

C. V. One who has not burned vehemently against simoniacs will have a portion with Simon.

The same in the same place. Whoever is ordained through money is promoted so that he may become a heretic. Therefore, whoever, according to the station of his office, has not burned vehemently against the simoniacal heresy and that of neophytes should not doubt that he will have a portion with the one who first committed this heinous outrage.

C. VI. The condemnation of Simon encompasses equally the giver and the receiver.

Likewise Pope Gelasius, [to the Bishops established throughout Lucania, epistle I, c. 26]. Those who are established to have bought a sacred dignity for a price, though unworthy by their merits, must, when convicted, be excluded, since they perpetrate such a crime not without peril, because the condemnation of Simon, which sacred reading attests, encompasses equally the giver and the receiver.

C. VII. One who is ordained simoniacally is condemned by a sentence of anathema.

Likewise Ambrose in the pastoral book. Very many are found wishing, by the commerce of a gift, to buy the grace of the Holy Spirit, when they give a price to those persons so that they may receive the sublimity of the pontifical order, forgetful of the words of Peter, who said to Simon: "May your money be with you unto perdition, because you thought to possess the gift of God by money." Therefore, because so great an evil is both customary and has frequently been cut down by the blade of our forebears, we too apply to this cancerous wound the heated iron which still remains, decreeing altogether that whoever from now on is discovered to have offered any reward for receiving the dignity of the divine gift is to know himself condemned from that very time by the reproach of anathema and estranged from participation in the body and blood of Christ, from the time when it is established that he perpetrated this outrage execrable to Christ. But if anyone should arise as his accuser, the one who gained this order by the giving of gifts is both to be deprived of the grade of honor he received and to be thrust into a monastery under perpetual penance. Those, however, who were recipients of gifts in this cause, if they were clerics, are to be punished by the loss of their honor; but if laymen, they are to be condemned by perpetual anathema.

C. VIII. A bishop who performs an ordination through money is condemned.

Likewise from the Council of Chalcedon, [c. 2]. If any bishop performs an ordination through money and reduces to a price the grace of the Holy Spirit, which cannot be sold, and ordains through money

a priest or deacon, or promotes any of those who are numbered among the clergy—even a steward or defender, or anyone subject to the rule—for the advantage of his most shameful gain, he who is proved to have attempted this will be subject to the peril of his own grade; and let the one ordained derive no benefit from this ordination or promotion which was effected through commerce, but let him be estranged from the dignity or charge which he acquired by money. But if anyone was a mediator in such shameful and impious gifts or receipts, if indeed he was a cleric, let him fall from his own grade; but if a layman, let him be anathematized.

C. IX. Let one who ordains or is ordained through money be estranged from the priesthood.

Likewise from the Eighth Synod. Let one who has consecrated anyone through money, or who has been consecrated by another, be estranged from the priesthood.

C. X. No one may be ordained or promoted in the Church of God through money.

Likewise Pope Callistus [II]. Following the examples of the holy Fathers and renewing them by the obligation of our office, by the authority of the apostolic see we prohibit in every way that anyone be ordained or promoted in the Church of God through money. But if anyone has acquired an ordination or promotion in the Church in this manner, let him be wholly without the dignity acquired.

C. XI. On the same.

Likewise Gregory Nazianzen. There is no doubt that one who strives to buy the gift of God for a price can by no reason remain in holy order thereafter or be recalled to it. Let such a man be cut off from communion in every way. For what else is buying the gift of the Holy Spirit for a price than a capital crime and simoniacal heresy? How detestably this was punished in both Testaments is readily apparent from many examples. Gehazi sold to Naaman the Syrian the grace of healing; with Elisha punishing him, he lost that same grace of healing when he was made a leper. Judas sold the Redeemer of all; soon afterward, suspended from a noose, he did not obtain that same grace of redemption—and deservedly, because no one can retain what he has sold. Simon Magus also, when he wished to buy that same grace of the Holy Spirit, heard from Peter the sentence of his condemnation: "May your money be with you unto perdition, because you thought to possess the gift of God by money." The Lord also, to show that sellers and buyers are without a share in this grace, forgave all sinners through grace in the temple, but, reproving sellers and buyers in particular, drove them from the temple with a scourge; in this it is established that sellers and buyers are destitute and empty of the grace of the Holy Spirit. For will the Spirit of Christ make those whom Christ cast out of the temple a temple for himself?

C. XII. Simoniacs cannot be priests.

Likewise Gregory. Those who sell or buy sacred orders cannot be priests. Hence it is written: "Anathema to the giver, anathema to the receiver: this is the simoniacal heresy." How, then, if they are anathema and are not holy, can they sanctify others? And since they are not in the body of Christ, how can they hand over or receive the body of Christ? How can one who is accursed bless?

[C. XIII.]

The same, [Gregory to Syagrius and other Bishops, book VII, epistle 110]. Since it is clear that this heresy, before all others, crept in with a pestilential root and was condemned in its very origin by apostolic detestation, why is it not guarded against? Why is it not weighed that the blessing is converted into a curse for the one who is promoted so that he may become a heretic?

C. XIV. One who ordains for a price confers leprosy, not office.

Likewise Ambrose, *On Ministries*, [or *On Priestly Dignity*, c. 5]. When he was ordained bishop, what he gave was gold; what he lost was his soul. When he ordained another, what he received was gold; what he gave was leprosy.

[C. XV.]

Likewise, [in the same place]. When you were ordained, you did not receive grace, because you did not merit it gratuitously.

[C. XVI.]

Likewise concerning Gehazi. Leprosy swiftly follows shameful payment, and money wickedly acquired stains body and soul. § 1. You see that by the deed of the author the succession of the heir is condemned. For inexpiable is the fault of a ministry sold, and vengeance for heavenly grace passes to descendants. Finally, the Moabites and others will not enter the Church of God unto the third and fourth generation—that is, so long, to interpret it more simply, until the manifold succession of a generation should abolish the fault of its authors. But since those who sinned against God by the error of idolatry appear to have been punished unto the fourth generation, surely the sentence by which the seed of Gehazi is condemned forever for the cupidity of possessing appears harsher, especially since our Lord Jesus Christ, through the washing of regeneration, has given remission of sins to all. Why, then, is the seed of Gehazi condemned forever, unless you understand the seed to be of vices rather than of lineage? For just as those who are children of the promises are reckoned as good seed, so also those who are of error are reckoned as evil seed. For even the Jews are from the devil as father, certainly not by succession of flesh but of crime. Therefore all the covetous, all the avaricious, possess the leprosy of Gehazi together with their riches, and by wickedly acquired payment they have gathered not so much an abundance of patrimony as a treasure of crimes, with eternal punishment and brief fruit. Part II. GRATIAN. Therefore, because by the authority of Pope Leo simoniacs receive nothing but the spirit of falsehood; according to Gregory, the priesthood does not subsist among simoniacs, their blessing is converted into a curse, the anathema of giving and receiving remains among them, and, since they are not holy nor constituted in the body of Christ, since they are accursed, they can neither sanctify others, nor hand over or receive the body of Christ, nor bless others; according to Ambrose, moreover, they are condemned by the reproach of anathema and estranged from participation in the body and blood of Christ, since gold is received and leprosy given, since the fault of a ministry sold is inexpiable; according to the Council of Chalcedon, they are judged to derive no benefit from such an ordination; according to Gelasius, they are encompassed by the condemnation of Simon; according to Gregory Nazianzen, by no reason can they remain in holy order or be renewed in it, they are covered with leprosy by Elisha, condemned to perdition by Peter, and driven from the temple by Christ: what else can a simoniac confer upon a simoniac in his

ordination except that which Innocent attests concerning other heretics, saying, [epistle XVIII to Alexander, c. 3]:

C. XVII. Those who do not have the perfection of the Spirit cannot give it.

Those who have lost the perfection of the Spirit which they had received cannot give its fullness—which operates especially in ordinations—since they lost it through their perfidy. And again: § 1. One who did not have honor could not give honor, nor did the other receive anything, because there was nothing in the giver; but through a depraved imposition of the hand he gave the condemnation which he had.

C. XVIII. Through a depraved imposition of the hand, a simoniac bestows not consecration but condemnation.

The same, [to Rufus and other Bishops, epistle XXII, c. 3]. We have come to the third question, which because of its difficulty requires a longer discussion. When we say that those ordained by heretics have a head wounded through that imposition of the hand, medicine by which it may be able to recover health must be applied where the wound was inflicted. The health which follows a wound cannot be without a scar; and where the remedy of penance is necessary, there the honor of ordination cannot have a place. For as it is read, "One who touches the unclean will be unclean"; how will that which purity and cleanness customarily receive be bestowed upon him? § 1. But, to the contrary, it is asserted that one who has lost honor cannot give honor, nor did the other receive anything, because there was nothing in the giver which he could receive. We assent, and it is certainly true, because he could not give what he did not have. Indeed, through a depraved imposition of the hand he gave the condemnation which he had; and how one who was made a participant of the condemned man ought to receive honor, I cannot discover. § 2. But it is said that the true and just blessing of a lawful priest removes every vice which had been injected by a vicious man. Therefore, if this is so, let the sacrilegious and those guilty of every crime be brought to ordination, because by the blessing of ordination crimes or vices are thought to be removed. Let there be no place for penance, because ordination can bestow what long satisfaction customarily bestows. But it is the law of our Church to bestow only lay communion through the imposition of the hand upon those coming from the heretics—who nevertheless were baptized there—and not to substitute any one of these into even the least honor of the clergy. Part III. GRATIAN. But it is objected: Other heretics depart from the faith, whereas simoniacs, although they think the grace of the Holy Spirit saleable, nevertheless are not alien from the faith; and therefore what is decreed by Innocent concerning other heretics cannot consequently be understood of them. To these things the response is thus: Although simoniacs appear to hold the faith, they are nevertheless subjected to the perdition of unbelief. Hence blessed Ambrose, writing against Novatian in the first book *On Penance*, said:

C. XIX. Simoniacs do not have the integrity of faith.

When Simon, depraved by the practice of magic art, had thought that he could buy the grace of Christ through the imposition of the hand and the infusion of the Holy Spirit, Peter said: "You have neither lot nor part in this faith, because your heart is not right before God." You see that by apostolic authority he condemns this man, who through magical vanity blasphemed against the Holy Spirit, and all the more because he did not have the pure conscience of faith.

C. XX. A simoniac is proved to be an unbeliever.

Likewise Gregory in the Register. Since all avarice is the service of idols, whoever does not vigilantly guard against it, especially in the giving of ecclesiastical honors, is subjected to the perdition of unbelief, even if he appears to hold the faith which he neglects.

C. XXI. The heresy of simoniacs is proved more damnable than the others.

Likewise from the epistle of Tarasius, Bishop of Constantinople, sent to Pope Hadrian. Those who have imposed or impose hands through money, the divine apostle Peter—whose chair your holiness has obtained—deposes like Simon Magus. § 1. For more tolerable is the impious heresy of Macedonius and of those who are around him, assailants of the Holy Spirit. For they, raving, confess the Holy Spirit to be a creature and a servant of God the Father and the Son; these men make that same Holy Spirit their own servant. For every master sells what he has if he wishes, whether a servant or any other thing among those which he possesses. Similarly also one who buys, wishing to be master of that which he has bought, acquires it through the price of money. Thus also those who carry out this iniquitous action detract from the Holy Spirit, sinning equally with those who blasphemed by saying that Christ cast out demons in Beelzebub; and, to speak more truly, they are compared to Judas the traitor, who sold Christ to the Jews who killed God. Since, therefore, the Holy Spirit is consubstantial with Christ, they will be of the same portion as Judas. And beyond doubt the grace of the Holy Spirit—that is, the holiness of the priesthood—is not in them. For they do not have what they did not receive. For Peter says to Simon: "You have neither part nor lot in this word, because you thought to possess the gift of God by money." § 2. For both the twenty-ninth canon of the holy Apostles, and their Acts, and the third and fourth books of Kings pronounce one who at any time has given or received money to be altogether alien from the priesthood, whether before the imposition of the hand or after the imposition. For to receive is to receive at any time.

C. XXII. Let both the one who gives and the one who receives so that sacred orders may be bestowed be anathema.

Likewise from the Second Council of Braga, [c. 3]. It has pleased the council that bishops receive no gifts for the ordination of clerics, but that, as it is written, what they receive with God giving freely they give freely. Let not the grace of God and the imposition of hands be sold for any price, because the ancient definition of the Fathers established thus concerning ecclesiastical ordinations, saying: "Let there be anathema upon the giver and the receiver." Because some, overwhelmed by many crimes and ministering unworthily at the holy altar, obtain this not by the testimony of good works but by the profusion of gifts, clerics must be ordained not through the favor of gifts but first through diligent examination and then through the testimony of many. GRATIAN. From this authority of Ambrose and Gregory it is clear that simoniacs—just as other heretics—depart from the faith, and therefore what is decreed concerning others is consequently understood of them. Part IV. § 1. Likewise it is objected that prophecy is a gift of the Holy Spirit, but that in the Old Testament it customarily was sold by holy prophets. Hence Saul presumed to go to Samuel to seek an oracle only with a gift. The wife of Jeroboam also approached the man of God only with a gift. Likewise Christ, sold by Judas, healed the servant's ear. Thus, from the example of Saul and Jeroboam's wife it is clear that to buy or sell the gift of the Holy Spirit is not a sin. From the example of Christ it is evident that, although the Holy Spirit is unjustly thought saleable by simoniacs, he nevertheless does not forget

his power, nor even when sold does he cease to bestow the effect of his grace. But concerning prophecy blessed Jerome resolves the matter suitably on [c. 3 of] Micah, declaring that only the wicked received gifts, not the good:

C. XXIII. Wicked prophets, not good ones, sold prophecy.

"Its rulers," he says, "judged for gifts, its priests answered for payment, and its prophets divined for money, and they rested upon the Lord, saying: Is not the Lord among us? Evils will not come upon us. Therefore, because of you Zion will be plowed like a field, and Jerusalem will be like a watchtower of an orchard." Let no one doubt that Jerusalem was overthrown because of the crimes which are read in this chapter. And a little later: § 1. Peter could have sold to Simon Magus what he sought; rather, he could have feigned himself a seller—for the Holy Spirit can neither be sold nor bought—but he condemned the money offered together with the one offering it. § 2. Nor should that move anyone which we read in the first book of Kings, that Saul, wishing to go to Samuel, said to his servant that he could not go to him "because there is no price in my hand," and added: "A fourth part of a shekel is in my hand; this I will give to the man of God, and he will announce our way." For it is not written that Samuel received it or that they offered it; rather, they are fed by the prophet. But suppose that he received it: it is to be reckoned an offering for the tabernacle rather than a gift to the prophet. For a shekel has twenty obols. Therefore, a fourth part of a shekel is five obols. Thus our priests, if they wish to sell prophecy and to display the dove upon their chairs—which the Lord overturned with a scourge—should be content with the payment of only five obols. Would that they received not the price of estates but five obols. § 3. This same thing sounds forth in the third book of Kings concerning the wife of Jeroboam proceeding to the man of God, who offered only ten loaves, a little cake, and a vessel of honey. These things are to be reckoned expenses for the prophet rather than gifts for prophecy, although those who were accustomed to go to soothsayers could, from their wicked custom, have thought the same thing concerning prophets and wished to offer to holy men what they were accustomed to offer to diviners. § 4. Hence in the fourth book of Kings it is read "that Elisha came to Damascus, and Ben-hadad, king of Syria, was ill; and they announced to him, saying: The man of God has come here. The king said to Hazael: Take gifts with you and go to meet the man of God, and consult the Lord through him, saying whether I can escape from this illness. Hazael therefore went to meet him, having gifts with him and all the good things of Damascus, burdens of forty camels." But they are not to be believed to have received them, just as it is read concerning that same Elisha that Naaman, cleansed of leprosy, offered him gifts, saying: "I beseech you to receive a blessing from your servant." But he responded: "As the Lord lives, before whom I stand, I will not receive it." And although he pressed him, he did not acquiesce at all.

[C. XXIV.]

The same in the same place. Divination is never taken in a good sense. They indeed appeared to themselves to be prophets, but because they received money, their prophecy was made divination. GRATIAN. Therefore, since according to Jerome good prophets received not gifts for prophecy but offerings for the tabernacle, while for the wicked who did receive them prophecy—which appeared to be a gift of God—was converted into divination, which is diabolical, what else is gathered except that no spiritual grace cooperates with simoniacs, as was said above? For since in the sacraments "neither he who plants nor he who waters is anything, but God who gives the increase," who operates in them

if the Lord, who gives the increase, does not shine in them but is idle? Likewise, as to what is said concerning Christ—that just as Christ when sold restored Malchus's ear and performed miracles, so also the Holy Spirit can be sold and in that very sale operate his grace—this likeness is not valid. For the Holy Spirit does not spiritually operate in the perfidious commerce of avarice what Christ performed bodily for the sake of a certain mystery as an example of patience. For if the likeness is universal, since the Holy Spirit is believed able to be sold as Christ was, let him also be believed able to be crucified, which is impossible. It can also be understood, so that we do not depart from the likeness, that just as Christ when sold bestowed the gifts of his grace not upon the seller or buyer but upon those who were present without knowledge, for whom he also prayed upon the cross, so also the Holy Spirit is proved to bestow the effect of his grace not upon the seller or buyer but upon those who, led by ignorance, receive the Lord's sacraments from their hands. § 1. Likewise it is objected that although it is evil to buy ecclesiastical things, nevertheless sinister beginnings often arrive at happy outcomes. As Jacob arrived at the blessing through supplantation, as the crop which is sown by a leprous hand is nevertheless reaped clean, as beautiful offspring is born from adulterous intercourse, so also money which is acquired through simony has a happy outcome when it is expended to benefit the poor. But none of these things gives support to simoniacs. For Leo [the Bishop] says to the Bishops of Mauretania, [epistle LXXXV, otherwise LXXXVII]:

C. XXV. Things which are begun from an evil beginning are not brought to completion with a good outcome.

A primacy which either sedition has extorted or canvassing has seized, even if it does not offend in morals and actions, is nevertheless pernicious by the example of its own vice. And it is difficult for things begun from an evil beginning to be brought to completion with a good outcome.

C. XXVI. A good work is not built up where Christ is not the foundation.

Likewise Gregory to [Anastasius], Bishop of Antioch, [book VII, epistle 47, indiction 2]. Since Paul says, "No one can lay another foundation besides that which has been laid, which is Christ Jesus," it is consequently proved that where Christ is not the foundation there is no superstructure of a good work.

C. XXVII. Alms cannot be made from money acquired simoniacally.

The same to Syagrius the Bishop, [book VII, epistle 110]. It is not to be thought alms if that which is acquired from illicit things is distributed to the poor, because one who receives wickedly with this intention, that he may distribute well, is burdened rather than helped. § 1. Hence it is also certain that even if monasteries or hospices or anything else are constructed from money which is given for sacred orders, it does not profit toward reward. § 2. Therefore, lest under the pretext of alms we strive to receive anything with sin, Scripture prohibits it, saying: "The sacrifices of the impious, which are offered from crime, are abominable." For whatever is offered in sacrifice to God from crime does not appease the wrath of almighty God, but provokes it. Hence again it is written: "Honor the Lord from your just labors." Therefore, one who takes wickedly so that he may give as if well is established beyond doubt not to honor the Lord. Hence also it is said through Solomon: "One who offers a sacrifice from the substance of a poor man is as though he sacrifices the son in the sight of the father." Let us weigh how great the father's grief is if his son is sacrificed in his sight, and from this it is easily recognized how great a grief is aggravated before God when a sacrifice from robbery is

bestowed upon him. Therefore, the perpetration of sins of simoniacal heresy under the pretext of alms must be exceedingly avoided. For it is one thing to make alms because of sins, another to commit sins because of alms. And after a few words: § 3. Therefore, whoever desires to obtain the priesthood not for the pomp of exaltation but for usefulness should first measure his strength against the burden which he is about to undertake, so that, if he is unequal to it, he abstain, and approach with fear even that for which he judges himself sufficient.

C. XXVIII. A simoniacal shepherd provides no remedy for the sheep.

The same to Theodoric and Theudebert, Kings of the Franks, [book VII, epistle 114]. The simoniacal heresy—which first crept in against the Church of God by diabolical supplantation and in its very birth was struck and condemned by the zeal of apostolic vengeance—is reported to hold dominion within the boundaries of your kingdom, although faith together with life is to be chosen in priests. For if life is lacking, faith has no merit, as blessed James attests, who says: "Faith without works is dead." For what works can there be of a priest who is proved to obtain the honors of so great a sacrament by a reward? And after a few words: § 1. Hence, therefore, a mortal wound is inflicted not only upon the soul of the ordainer and the ordained, but the governance of your excellency is also weighed down by the fault of your bishops, by whose intercessions it should rather have been helped. For if he is believed worthy of the priesthood whom not merits of action but abundance of rewards supports, it remains that gravity defend nothing for itself in ecclesiastical honors, diligence nothing, but that the profane love of gold obtain everything. And while honor rewards vices, perhaps the one who was to be punished is brought into the place of the punisher; and hence priests are judged not to advance but rather to perish. For when the shepherd is wounded, who applies medicine for curing the sheep? Or how may he protect the people with the shield of prayer who exposes himself to be struck by the missiles of the enemies? Or what fruit will he produce from himself whose root is infected by grave pestilence? Therefore, a greater calamity must be feared in those places where such intercessors are brought to the place of governance, who provoke God's wrath against themselves more than they ought to appease it through themselves. GRATIAN. Therefore, since according to Leo simony is not brought to completion with a good outcome; according to Gregory, no superstructure of a good work follows, nor is that to be thought alms which is expended to the poor from the price of simony; medicine is not applied to cure the sheep when the shepherd is wounded; fruit is not produced from an infected root; and even a greater calamity is feared in the future—from so sinister a beginning, what happy outcome is hoped for? Hence Augustine says:

C. XXIX. The sacraments of simoniacs lack the effect of grace.

Just as the eunuch who bought Joseph was one, so one who buys grace has no living seed in his dry generative organs. So also the fire of sacrifice, which had lived under water through the seventy years of the Babylonian captivity, was extinguished when Antiochus sold the priesthood to Jason; this signified that the fire of the Holy Spirit does not shine in simoniacal sacraments. GRATIAN. What did blessed Augustine wish to signify by these likenesses except that the sacraments of simoniacs, just as those of other heretics, although true as to form, are nevertheless empty and false as to effect, since they cannot engender or kindle heavenly grace in human hearts? Part V. § 1. But that saying of Augustine against the heretics is objected, [tractate V on the Gospel of John]:

C. XXX. Whether the minister is good or evil, through either one God confers the effect of grace.

If the minister has been just, I count him with Paul, who does not seek his own glory, saying: "I planted, Apollo watered, but God gave the increase." But a minister who has been proud is counted with the devil; yet Christ's gift is not contaminated, because the pure river passes through him and comes to fertile earth. I know that a stone cannot bear fruit from water and that water passes through stony channels to the garden plots: it engenders nothing in the stony channel, but the garden brings forth very much fruit. For the spiritual power of the sacrament is received as pure light by those who are to be illuminated; but in passing through the unclean it is not defiled.

C. XXXI. On the same.

Likewise to Vincentius the Donatist, [epistle XLVIII]. All the Lord's sacraments are from the catholic Church; you have and give them just as they were had and given before you departed from it.

C. XXXII. On the same.

Likewise to the Donatists, [book V, c. 19]. Thus God is present to his sacraments and words, through whomsoever they are administered, when their sacraments and words are right; just as evil men, whom these profit nothing, are perverse everywhere, that is, within and without.

[C. XXXIII.]

Likewise, [book IV, *On Baptism against the Donatists*, c. 12]. Therefore no one, either without or within, who is on the devil's side can defile in himself or in anyone else the sacrament which is Christ's.

C. XXXIV. Sacraments which are not changed are proved common to catholics and heretics.

The same [Augustine] to Emeritus, [epistle CLXIV]. The sacraments which you have not changed, just as you have them, are approved by us, lest perhaps, when we wish to correct your depravity, we inflict sacrilegious injury upon those ministries which have not been depraved in your depravity. Nor had Saul depraved the anointing which he had received, an anointing to which the pious David repeatedly displayed so great an honor.

C. XXXV. On the same.

The same to the Donatists. Just as the false receive true things truly, not falsely, nor is their baptism rejected, so when schismatics and heretics come to us, we do not correct but rather approve those things which they have no differently and perform no differently than the true Church.

C. XXXVI. The sacraments are not to be shunned, by whomsoever they are ministered.

The same against Petilian, [book III, c. 9]. Let no one shun God's sacraments either in a good man or in an evil man.

C. XXXVII. Human wickedness does not profane the sacraments.

The same in the book *On Baptism*, [against the Donatists, book VI, c. 44]. Were not the Sodomites pagans, that is, gentiles? The Jews, then, were worse, to whom the Lord says: "It will be more

tolerable for Sodom on the day of judgment than for you," and to whom the Prophet said: "You have justified Sodom," that is, by comparison with you she was made just. Yet were the divine sacraments which were among the Jews of the same quality as they themselves were? The Lord himself also received them, and sent the lepers whom he had cleansed to celebrate them; and an angel stood by Zechariah while he ministered them and announced that he had been heard while sacrificing in the temple. These same sacraments were both in the good men of that time and in evil men worse than the gentiles, since they were placed before the Sodomites in wickedness, and nevertheless those sacraments were integral and divine in both. For even the gentiles themselves, if they could have anything divine and right in their doctrines, were not rejected by our saints, although they were detestable because of their superstitions, idolatry, pride, and other ruined morals, and, unless corrected, were to be punished by divine judgment.

C. XXXVIII. Evil men can have sacraments, although they cannot have the power of the Holy Spirit.

The same, [book III, c. 16]. There are many operations of the Holy Spirit; when the same Apostle had commemorated them in a certain place, he concluded thus: "But one and the same Spirit operates all these things, dividing to each one his own gifts just as he wills." Therefore, since the sacrament which even Simon Magus could have is one thing, prophecy which is customarily made even in evil men, as in Saul, another, and the operation of that same Spirit which only the good can have—that is, charity—another: whatever heretics and schismatics may receive, "charity, which covers a multitude of sins," is the proper gift of catholic unity and peace, nor is his gift in all, because not all are his.

C. XXXIX. Although evil men minister the sacraments, they do not bestow remission of sins.

The same, [in the same book, c. 18]. The avaricious do not give remission of sins; it is given through prayer, that is, through the groaning of the dove, whoever may baptize, if those to whom it is given belong to its peace. For the Lord does not say to robbers and usurers: "If you forgive anyone's sins, they are forgiven him; if you retain anyone's, they are retained." Without, indeed, no one can be bound or loosed where there is no one who can bind or loose another; but one who has made peace with the dove is loosed, and one who does not have peace with the dove is bound, whether he is openly without or appears to be within. GRATIAN. Therefore, if sacraments, after the manner of light, cannot be defiled by the unclean; if, after the manner of a pure river, they come through stony channels to fertile garden plots, it is clear that simoniacs have the sacrament of anointing uselessly and perniciously for themselves, but administer that same anointing usefully and salvifically to others. Therefore, just as the sacraments of heretics are true as to form, so they are true and not empty as to effect. Part VI. But it is to be noted that some sacraments are of dignity, others of necessity. Because necessity has no law, but makes a law for itself, those sacraments which are necessary for salvation, because they cannot be repeated, when they are true ought not to be taken away or lost, but with penance are permitted to be ratified. But those sacraments which are of dignity, unless they have been worthily administered in such a way that worthy persons are worthily advanced by worthy persons, cease to be dignities—not so that the truth of the sacrament is diminished, but so that the office of administering ceases, by reason either of place, time, or promotion. By reason of place, as Leo says, [to Rusticus, Bishop of Narbonne, epistle XC, otherwise XCII, c. 1]:

C. XL. Concerning those who are ordained by pseudo-bishops.

If any have been ordained by pseudo-bishops, such an ordination can be held ratified, provided that they remain in those same churches. Otherwise such an ordination is to be held vain. GRATIAN. Behold, if anyone ordained by pseudo-bishops changes the place of his ordination, such an ordination is vain and will be without administration. By reason of time, as Innocent says, [epistle XXII, c. 5], concerning those ordained by Bonosus:

C. XLI. Things which are conceded because of necessity will cease when that necessity ceases.

What was established because of the necessity of the time ought likewise to cease when that which pressed ceases, because lawful order is one thing, usurpation another. GRATIAN. Therefore, someone ordained at another time by one similar to Bonosus will cease from the administration which was permitted because of the necessity of that time. Likewise by reason of promotion, as Leo says, [epistle III to Julian of Aquileia]:

C. XLII. Those who return from heretics can be received in their orders without hope of promotion.

If anyone has stained himself by the contagion of heretical communion, he has this as a great benefice: that, with every hope of promotion taken away, he may remain in the order in which he is found. GRATIAN. Behold, if a cleric communicates with heretics either in ordination or in any sacrament, when promotion ceases he scarcely remains in his own order. For it is not with this sacrament as with the others. For the others are either given for washing away faults, as baptism and penance, or are denied for faults not eternally but for a time, as the Eucharist, which at the moment of death is conceded to one penitent even of heinous sins. This one alone is interdicted not only because of fault but also because of infamy, and even because of the diminished prerogative of its own purity or of external or internal perfection, as it is denied to bigamists, to husbands of widows, to the illiterate, or to those defective in any part of the body, to whom nevertheless baptism or the Eucharist is not denied. Such a person can also administer all the sacraments who is unable to confer this one alone. Hence Leo says, [to the Bishops of Africa, epistle LXXXV, otherwise LXXXVII, c. 2]:

C. XLIII. Concerning bishops who consecrate one whom it is not permitted to consecrate.

If any bishops have consecrated as priest such a man as it is not permitted to be one, even if in some way they escape the loss of their own honor, they will nevertheless no longer have the right of ordination, nor will they ever participate in that sacrament which they bestowed without merit. GRATIAN. Behold, while they escape the peril of honor so that they are permitted to administer the other sacraments in priestly fashion, they are removed from this one alone not merely for heresy or any greater fault but even for negligence. In all these things it must be carefully noted that the sacrament of priestly promotion is to be given or received more carefully and worthily than all the others, because unless it has been conferred in this way, it thereby ceases to be ratified, because it was not rightly perfected. For the other sacraments are given to each person for himself, and become for each person such as the heart or conscience with which they are received. This one alone is given not for himself alone but for others; and therefore it is necessary that, as to himself, it be received with a true heart and clean conscience, but as to others, not only without every fault but also without

all infamy, because of the scandal of the brothers, for whose usefulness the priesthood is given not only that priests may preside but also that they may profit. Hence Jerome on Micah:

C. XLIV. Simoniacs are guilty of the unbelief of those who are scandalized.

Those who ordain any of their followers and expose their life as a scandal to the people are guilty of the unbelief of those who are scandalized. GRATIAN. For truly those who are chosen so that they may preside over others, just as they are preordained in dignity, so ought to be preeminent in sanctity. Otherwise, why are those preferred to others who by no grace of merits are raised above the others? Hence Symmachus to Lawrence, Bishop of Milan:

C. XLV. Just as in honor, so each person ought to excel in knowledge.

He is to be reckoned most vile, unless he excels in knowledge and sanctity, who is more excellent in honor. Part VII. GRATIAN. Therefore it is clear that this saying of Augustine—namely, that the sacraments of Christ ministered through heretics do not lack their effect—is to be understood not generally of all but of the sacrament of baptism. Hence the same Augustine says, [tractate V on John]:

C. XLVI. Whether baptism is ministered by a good man or by an evil one, it ought not to be repeated.

Judas gave baptism, and there was no baptism after Judas; John gave baptism, and there was baptism after John, because that which was given by Judas was Christ's baptism, while that by John was John's. We rightly prefer not Judas to John, but Christ's baptism—even when given through the hands of Judas—to John's baptism. Likewise: § 1. Those whom Judas baptized, Christ also baptized; thus, therefore, those whom a drunkard, murderer, or adulterer baptizes, Christ baptizes. Likewise: § 2. The sacrament of the Church is so great that it is not polluted even when a murderer ministers it.

C. XLVII. On the same.

Likewise against the Donatists, [book IV, c. 4]. Just as I seem to be pressed when it is said to me, "Therefore, does a heretic forgive sin?" so I also press when I say, "Therefore, when an avaricious man, a pretender to religion, baptizes correctly, does he forgive sins?" If by the power of the sacrament, both the one and the other do; if by his own merit, neither the one nor the other does. For that sacrament is recognized to be Christ's even in evil men; but in the body of the one undefiled dove neither the one nor the other is found. It is as though someone's hand were withered: it would indeed be a true member, although without blood it would be ineffectual and dead. So also faith, though true, is nevertheless dead without works. Likewise: § 1. Thus one baptized in heresy in the name of the Holy Trinity is nevertheless not made a temple of God if he has not departed from heresy, just as one baptized in the same name while in avarice is not made a temple of God if he does not depart from avarice, which is the service of idols. Part VIII. GRATIAN. From these words, therefore, it appears that baptism which is bestowed by heretics confers remission of sins by its own power. But the same Augustine testifies to the contrary in book [VI] *On Baptism* [against the Donatists, c. 1], saying:

C. XLVIII. Although Christ's baptism is violated by no depravity, among heretics it nevertheless lacks effect.

Even those slower of heart understand that Christ's baptism can be violated by no depravity of the giver or receiver. But because the sacrament is one thing and the effect of the sacrament another, since it is established that those who live ruinously in the very unity of the Church can neither give nor have remission of sins—because it was said not to evil sons but to good ones, "If you forgive anyone's sins, they will be forgiven; if you retain anyone's, they will be retained"—it is therefore clear that heretics only give or receive the sacrament of baptism.

[C. XLIX.]

Likewise in *The Words of the Lord concerning Blasphemy against the Spirit*. Bodily sacraments, which even those separated from the unity of Christ's body bear and celebrate, can have a form of piety. But the invisible and spiritual power can no more be in them than sensation follows a member when it is amputated from the body.

C. L. On the same.

Likewise Ambrose in the book *On Initiating the Untaught*. The baptism of the perfidious does not heal, does not cleanse, but pollutes, because in the flood of waters they will not approach God; for, as is said through the Apostle, "Whatever is not from faith is sin," and it not only does not profit those who perform it and those for whom they perform it, but is unto judgment.

C. LI. Those who receive baptism from heretics are confirmed through the imposition of the hand.

Likewise Pope Leo to Bishop Nicetas, [epistle LXXVII, otherwise LXXIX, c. 7]. Those who received baptism from heretics, when they had not been baptized before, are to be confirmed by the invocation of the Holy Spirit alone through the imposition of the hand, because they received only the form of baptism without the power of sanctification. And, as you know, we proclaim that this rule is to be observed in all churches: that the washing once entered upon be violated by no repetition, as the Apostle says, "One God, one faith, one baptism"; its washing is to be profaned by no repetition, but, as we have said, only the sanctification of the Holy Spirit is to be invoked, so that what no one receives from heretics he may obtain from catholic priests. Part IX. GRATIAN. But it must be noted that heretics such as Arians and Sabellians—of whom some confessed an inequality, others a lack of distinction, of the persons—ministered baptism not in the form of the Church but of their own depravity. § 1. Ambrose spoke particularly of these, saying: "The baptism of the perfidious does not heal, etc.," so that they are also rebaptized and reordained. Hence it was established in the Council of Nicaea, [c. 19]:

C. LII. Let those who return to the Church from the Paulianists and Cataphrygians be rebaptized and ordained.

If anyone has fled to the catholic Church from the Paulianists and Cataphrygians, let it be established that they ought altogether to be rebaptized. But if any were clerics among them, provided they were blameless and irreproachable, they are to be rebaptized, and let them again also be ordained by the bishop of the catholic Church. But if, when examined, they are discovered to be less suitable, they

must be deposed. Similarly also concerning deacons and all who are found in that same clergy, the same form will be observed.

[C. LIII.]

Likewise Innocent, [to the Bishops of Macedonia, epistle XXII, c. 5]. The Paulianists do not at all baptize in the name of the Father and of the Son and of the Holy Spirit, while the Novatians baptize in those same dread names, nor among them has any question ever been raised concerning the unity of the divine power, that is, of the Father, Son, and Holy Spirit, etc.

GRATIAN. Others preserve the form of the Church in baptizing. But when those who communicate with them in heresy or schism are baptized by them, they indeed receive from them the sacrament of baptism but do not obtain its power, which no one can obtain without faith. Hence it is said concerning the Lord that in his own country he could not perform a sign because of their unbelief. Likewise Augustine in homily LXXX:

C. LIV. When the word comes to the element, it becomes a sacrament.

Take away the word: what is the water but water? The word comes to the element, and it becomes a sacrament. § 1. Whence is there so great a power of the water that it touches the body and washes the heart, except through the word's operation? Not because it is spoken, but because it is believed. For even in the word itself the passing sound is one thing, the abiding power another. GRATIAN. Concerning those also who are baptized in heresy or schism, Augustine writes to Peter the Deacon, [c. 36], saying:

C. LV. Those baptized outside the Church accumulate perdition for themselves if they have not returned to the Church.

Hold most firmly and doubt in no way that for those baptized outside the Church, if they have not returned to the Church, perdition is increased by baptism. For the communion of ecclesiastical fellowship avails so greatly toward salvation that one is not saved by baptism when it is not given there where it ought to be given.

C. LVI. Gifts which are possessed apart from the unity of the Church are useless.

The same, [tractate XIII on c. 3 of John]. Let us hold to unity, my brothers. Apart from unity, even one who performs a miracle is nothing. The people of Israel were in unity and did not perform miracles; Pharaoh's magicians were apart from unity and performed things similar to Moses. The people of Israel, as I have said, did not perform miracles. Who were to be saved before God: those who performed miracles, or those who did not? Peter the Apostle raised a dead man. Simon Magus did many things. There were certain Christians who could perform neither what Peter performed nor what Simon performed. But in what did they rejoice? Because their names were written in heaven.

C. LVII. Baptism once bestowed is not to be repeated.

Likewise Leo to Bishop Nicetas, [epistle LXXVII, otherwise LXIX, c. 7]. We proclaim that this rule is to be observed in all churches: that the washing once entered upon be violated by no repetition, as the Apostle says, "One God, one faith, one baptism"; its washing is to be violated by no repetition,

but only the sanctification of the Spirit is to be invoked, so that what no one receives from heretics he may obtain from catholic priests. Part X. GRATIAN. "No one" is to be understood as one established in heresy or schism. But if, with integrity of faith and purity of soul, someone has received baptism from the hand of heretics in the form of the Church, then that saying of Augustine is fulfilled: "Through a stony channel the water passes to the garden plots." And again: "The spiritual power of the sacrament, etc."

C. LVIII. Even through the evil, the good are gathered.

Likewise [Augustine], *On Blasphemy against the Holy Spirit*. The Holy Spirit in the holy Church, even in this time in which the grain is, as it were, threshed with the chaff, operates so that he disdains no one's true confession, is deceived by no one's pretense, and so flees the reprobate that even through their ministry he gathers the upright. GRATIAN. Behold when baptism is received from heretics with its power; its administration is so necessary that even when given by pagans it cannot be repeated. Hence it is read in the Ecclesiastical History that Alexander, Bishop of Alexandria, when he was celebrating the solemn rites of Peter the Martyr, after the sacraments of the masses had been completed, saw on the seashore the play of boys imitating a bishop, as is customary, and performing the things which customarily are performed in the Church. Immediately he ordered them to be brought to him and asked what they had done. They revealed the order of the affair, confessing that certain catechumens had been baptized by them through the boy Athanasius, who had pretended to be their bishop. When he saw from their answers that all things accorded with the rite of our religion, he established that baptism ought not to be repeated for those upon whom water had been poured with the questions and answers complete, but that the things which it is customary for priests to perform should be completed. Hence Isidore also says:

C. LIX. Concerning those who through ignorance are ordained before they are baptized.

If anyone through ignorance is ordained before he is baptized, those baptized by him ought to be baptized again, and he himself is not to be ordained thereafter. But the Roman Pontiff does not judge the man who baptizes, but believes that the Spirit of God supplies the grace of baptism, even if it is a pagan who baptizes.

[PALEA.

C. LX.

From the Council at Compiègne. If an ordained priest discovers that he has not been baptized, let him be baptized and ordained again.]

GRATIAN. That the other sacraments cannot be ministered by heretics is attested by Jerome on the Prophet Haggai, [c. 2]:

C. LXI. Things offered by heretics do not please God.

Such is this people of all heretics in my sight, says the Lord; everything they have done, everything they have offered to me—whether vows, or offerings for salvation, or peace offerings, or offerings for sin, or whole burnt offerings, or alms, or fasts, or chastity of the body—will be contaminated in my

sight. For although the things offered appear holy in their form, nevertheless, because they have been handled by one who is polluted in soul, all are polluted.

C. LXII. On the same.

Likewise on the Prophet Amos, [c. 5]. God hates the sacrifices of heretics and casts them away from himself; and whenever they have been gathered in his name, he detests their stench and closes his nostrils.

[C. LXIII.]

Likewise on Hosea, [c. 6]. They offer sacrilegious bread and give alms, and appear to pursue humility. If these things were truly done, I would interpret them as whole burnt offerings. But since they have forsaken the knowledge of God, in vain do they boast that they possess the other members when the head of faith has been cut off.

C. LXIV. Without faith and charity, neither is the Gospel possessed nor do any good things profit.

The same in the epistle to the Galatians, [c. 1, v. 11]. Marcion and Basilides and the other plagues of heretics do not have the Gospel of God, because they do not have the Holy Spirit, without whom the Gospel that is taught becomes human. Nor should we think that the Gospel is in the words of the Scriptures, but in their sense; not on the surface, but in the marrow; not in the leaves of the discourses, but in the root of reason.

[C. LXV.]

The same, [on c. 5 of the same epistle, v. 14]. See how great a good charity is. If we undergo martyrdom in such a way that we wish our relics to be honored by men, and if, following the opinion of the crowd, we pour out our blood fearlessly and give our substance even to the point of our own beggary, not so much a reward as a penalty is owed to this work, and there are torments of perfidy rather than a crown of victory.

C. LXVI. The blessing of heretics is a curse.

Likewise from the Council of Laodicea, [c. 32]. It is not fitting to receive the blessings of heretics, because they are curses rather than blessings.

C. LXVII. It is permitted to pray neither with heretics nor with schismatics.

Likewise from the Council of Pope Martin, [c. 70]. Let neither clerics nor laymen be permitted to receive blessed gifts from heretics, because they are curses rather than blessings; nor let it be permitted to pray either with heretics or with schismatics.

C. LXVIII. Outside the Church there are no true sacrifices.

Likewise Leo to Anatolius, Bishop of Constantinople, [epistle XLVIII, c. 2]. In the Church of God, which is the body of Christ, neither are priesthoods otherwise ratified nor sacrifices true unless the true Pontiff reconciles us in the property of his own nature.

C. LXIX. The divine sacraments withdraw themselves from the hands of the impious.

The same to Emperor Leo, [epistle LXXIII]. It is manifest that through most cruel and most insane madness all the light of the heavenly sacraments has been extinguished in the Alexandrian see. The offering of sacrifice has been intercepted; the sanctification of chrism is lacking; and all the mysteries have withdrawn themselves from the parricidal hands of the impious.

C. LXX. Sacraments can be ministered outside the Church, but they cannot confer salvation.

Likewise the blessed martyr Cyprian in the epistle against heretics. If anyone, he says, has departed from the Church by heretical presumption, he is condemned by himself. According to the Apostle, we ought not even to take food with one of this kind. This is declared in the book of Kings, where, when the man of God had been sent to Jeroboam to reproach his sins and foretell future vengeance, he was prohibited from eating bread and drinking water in his house. When he did not observe this, returning from there he died on the way from the bite of a lion, by divine sentence. § 1. Ought anyone to say that the saving sacrament and heavenly grace can be common with heretics, with whom neither earthly food nor secular drink ought to be common? Moreover, it is established that the oil with which the baptized are anointed cannot be sanctified, and the Eucharist cannot be made among them at all, where there is no hope and the faith is false, where all things are performed through falsehood. For the heretic, after the manner of apes which imitate the human form although they are not human beings, claims for himself the countenance, authority, and truth of the catholic Church, although he himself is not in the Church. He blesses although he is accursed by God; he promises life although he is dead; as a blasphemer he invokes God; as a profane man he administers the priesthood; as a sacrilegious man he sets up an altar. To all these things this evil also is added: that the prelate of the devil dares to make the Eucharist, although an offering cannot be sanctified there where the Holy Spirit is not, nor can the Lord profit anyone through the prayers and supplications of one who himself has violated God. For if those who violate the Church are held as gentiles and publicans, much more is it necessary that rebels and enemies, fashioning false altars, illicit priesthoods, sacrilegious sacrifices, and every adulteration, be counted among gentiles and publicans; all of these are established to have departed from the charity and unity of the catholic Church. Therefore, all things whatsoever that heretics perform are carnal, empty, and false, so that none of the things which they have performed ought to be approved by us. Things which are boasted in Christ's name are not immediately to be received and adopted, but those which are performed in Christ's truth. For how can those who attempt against God what is not permitted to them perfect the things they perform or obtain anything from God by illicit endeavors? § 2. Therefore, those who give patronage to heretics and schismatics are proved by divine censure to be destined for their crime and punishments—not only the leaders and authors but also the participants—unless they separate themselves from the communion of the wicked, as the Lord commands through Moses: "Separate yourselves from the tents of these most hard men, and do not touch any of the things which are among them, lest you perish together in their sins." And the Lord fulfilled what he had threatened through Moses, so that whoever had not separated himself from Korah, Dathan, and Abiram immediately paid the penalties for impious communion. So also the Holy Spirit testifies through the prophet Hosea, saying: "Their sacrifices are like the bread of mourning; all who eat them will be

contaminated," plainly teaching and showing that absolutely all who have been contaminated by their sin are joined with the authors in punishment.

C. LXXI. True sacrifices are celebrated only in the faith of the Church.

Likewise Augustine, [book of *Sentences Collected by Prosper of Aquitaine, Bishop of Reggio*, c. 15]. Outside the catholic Church there is no place for true sacrifice. Likewise Gregory in the third book of the *Dialogues*, [c. 31], says concerning King Hermenegild, son of Leovigild:

C. LXXII. Communion is not to be received from the hand of heretics.

When the day of the Paschal festivity arrived, in the silence of the dead of night his perfidious father sent an Arian bishop to him so that he might receive communion of the sacrilegious consecration from his hand and through this might merit to return to his father's favor. But the man devoted to God reproached the Arian bishop who came, as he ought, and repelled his perfidy from himself with fitting rebukes.

C. LXXIII. Priests of heretics are not held worthy of Christ's honors.

Likewise Innocent, chapter VII. Moreover, Arians and the other plagues of this kind: because we receive their laymen when converted to the Lord under the form of penance and with the sanctification of the Spirit through the imposition of the hand, their clerics do not appear worthy to receive the dignity of the priesthood or of any ministry. For those to whom we permit only baptism to be ratified—which certainly is received in the name of the Father and of the Son and of the Holy Spirit—we do not judge to have the Holy Spirit from that baptism and those ministries, because, when their authors departed from the catholic faith, they lost the perfection of the Spirit which they had received, and those who through the perfidy of their impiety lost faith in the Lord cannot give the fullness of the Spirit which operates especially in ordinations. For this reason it cannot happen that we judge their profane priests worthy of Christ's honors, when, as I have said, we receive their laymen as imperfect, under the form of penance, for receiving the grace of the Holy Spirit. Likewise: § 1. It is read, "One who touches the unclean will be unclean"; how, therefore, will that which is accustomed to receive uncleanness and filth be bestowed upon him? And below: § 2. How one who has been made a participant of a condemned man ought to receive honor, we cannot discover. GRATIAN. Moreover, from the fact that the imposition of the hand is commanded to be repeated, it is shown not to be a sacrament. Hence Augustine, in book III *On Baptism*, [against the Donatists, c. 16]:

C. LXXIV. The imposition of the hand is not a repetition of a sacrament.

The imposition of the hand is not like baptism, which cannot be repeated. For what else is it but prayer over a man? GRATIAN. Therefore, since Innocent permits only baptism to be ratified among heretics; since Gregory calls the consecration of the Arians sacrilegious; since Cyprian judges whatever things are performed by heretics to be carnal, empty, and false; since Jerome asserts that all things offered by them are contaminated in the sight of the Lord; since Leo attests that outside the Church neither are priesthoods ratified nor sacrifices true: it is clear that ecclesiastical sacraments apart from baptism, as was said above, cannot be ministered by heretics. Likewise, that saying of Jerome to the Luciferian is objected:

C. LXXV. One who is holy in baptism will not be a sinner at the altar.

Just as Christ is he who baptizes, so he himself is he who sanctifies. Hence I ask you either to grant the license of sacrificing to the one whose baptism you approve, or to reject the baptism of one whom you do not think to be a priest. For it cannot happen that one who is holy in baptism is a sinner at the altar. GRATIAN. But this is to be understood only of a catholic sinner, not a heretic. Whatever he does with faith according to his office, although unworthy, is nevertheless believed ratified through the cooperation of divine grace. Otherwise, if it is understood to have been said concerning heretics, he would be contrary to himself, since he says on Hosea: "Their sacrifices, etc." And elsewhere in the person of the Lord:

C. LXXVI. God curses the blessings of heretics.

"I will curse your blessings": that is, whatever is blessed by you will be accursed by me. Part XI. GRATIAN. This, therefore, is to be understood of a heretic, but that statement to the Luciferian of an ecclesiastical sinner. Concerning him Augustine says in the book *On the Body of the Lord*:

C. LXXVII. Good and evil priests equally confect the body of Christ.

Within the catholic Church, in the ministry of the body and blood of the Lord, nothing greater is accomplished by a good priest, nothing less by an evil one, because it is accomplished not by the merit of the one consecrating but by the word of the Creator and the power of the Holy Spirit. For if it were accomplished by the merit of the priest, it would by no means pertain to Christ. But now, just as he himself is the one who baptizes, so he himself is the one who through the Holy Spirit makes this his flesh and transforms it into blood. For it is to be believed that the sacraments are confected in the words of Christ. Things first created by his command are certainly recreated for the better by his word.

C. LXXVIII. On the same.

The same in book II *Against the Epistle of Parmenian*, [c. 10]. Although all the sacraments harm those who handle them unworthily, they nevertheless profit those who receive them worthily through such persons, just like the word of God. Hence it was said: "Do what they say, but do not wish to do what they do."

C. LXXIX. Concerning those who use holy things wickedly.

The same in the tractate on the epistle of John. Saul, an evil king, prophesied even while he persecuted the holy David. Therefore, let those who perhaps have a holy gift of God without charity not boast, but let them see what account they will render to God who use holy things unholily. Of these will be those who will say in the judgment: "In your name we prophesied." It will not be said to them, "You lie," but, "I do not know you, etc." GRATIAN. Therefore they are to be said to have had the spirit of prophecy, not its merit.

C. LXXX. Each person is not so much sanctified by the offerings as polluted by sin.

Likewise Jerome on [c. 2 of] Haggai. O prophet, who, with the altar built and my house ruined, offer victims to me upon the altar and think yourself sanctified by its sacrifices, know that what is offered

upon the altar is indeed holy, but you are not so much sanctified by the offerings as polluted by dead works.

C. LXXXI. A word is spoken against the Holy Spirit when one never returns from dispersion.

Likewise Augustine in the book *On the Words of the Lord*, [sermon XI, toward the end]. Thus a word is made against the Holy Spirit when one never comes from dispersion to the congregation which received the Holy Spirit for forgiving sins. If anyone with a heart not false approaches this congregation even through an evil cleric—nevertheless a catholic minister, reprobate and false—the Holy Spirit operates remission of sins in him; in the holy Church he so operates that he flees the reprobate yet gathers the upright through their ministry.

C. LXXXII. Sins are forgiven not by the merits of men but by the power of the Holy Spirit.

The same in the sermon *On the Remission of Sins*. So that the Lord might show clearly that sins are forgiven by the Holy Spirit whom he gave to his faithful, not by the merits of men, in a certain place he said thus: "Receive the Holy Spirit"; and immediately added: "If you forgive anyone's sins, they will be forgiven him": that is, the Spirit forgives, not you. Therefore, just as one whom a priest takes up in the Church is nevertheless outside the Church and outside the body whose head is Christ if the doorkeeper is not present for him, so it does not follow that one is outside the Church and not of the body if he is compelled to be outside by the prejudgment of a shepherd.

C. LXXXIII. The Lord considers not the merits of persons but the offices of priests.

Likewise Ambrose, *On the Sacraments*. Since Scripture attests that at the prayers of Jeroboam fire descended from heaven, and again, when Elijah prayed, fire was sent which consumed the sacrifices, it is given to be understood that God considers not the merits of persons but the offices of priests. § 1. That visible fire was sent so that they might believe; an invisible one operates for us who believe. § 2. Believe, therefore, that the Lord Jesus, invoked by the prayers of priests, is present, who says: "Where two or three shall have been, there I am in their midst."

C. LXXXIV. Not the merits of priests but divine power sanctifies the sacraments.

Likewise Pope Gregory. Many secular persons, when they examine the life of priests more than their own, fall into the great crime of contempt for the divine sacraments. For having eyes wounded by a great beam and neglecting it, they perceive the thin splinter in the eyes of others; while they incautiously hasten to pull it out, they slip into the pit of error, paying too little heed to the fact that the life of priests would not harm them if they themselves humbly lent an ear to the good admonitions of priests. But while, after the manner of hypocrites, they judge the reputation of those men more than their own life or the negligences of their life, they spurn holy admonitions and spiritual gifts. Hence it happens that they reject not only the things said by them but—which is worse—also despise the divine mysteries, so that they do not receive either the communion of the body or the blood of our Lord Jesus Christ confected by their ministry, thinking it less sanctified if it is made by the office of those whose life appears ignoble in their eyes. § 1. Alas, into how great a

snare they fall, so that they believe divine and hidden mysteries can be made more sanctified by some than by others, although one and the same Holy Spirit, incomprehensibly throughout the Church spread over the whole world, secretly and invisibly sanctifies those mysteries by operating and blesses them by blessing. § 2. Accordingly, brothers, it is called a mystery because it has a secret and hidden dispensation; but a sacrifice, as though a sacred deed, because it is consecrated for us by a mystical prayer in memory of the Lord's Passion. § 3. A sacrament, moreover, exists in a certain celebration when the thing performed is such that we understand it to signify something which is to be received as holy. The sacraments are baptism, chrism, the body, and the blood; these are called sacraments for this reason: because beneath the covering of bodily things divine power more secretly works the salvation belonging to those sacraments. Hence sacraments are named from secret powers or sacred things. They are therefore performed fruitfully within the Church because the Holy Spirit abiding in her secretly works the same effect of the sacraments. The sacrament of the bread and cup is called *eucharistia* in Greek and is interpreted "good grace" in Latin. And what is better than the body and blood of Christ? § 4. Therefore, whether it is dispensed through good or evil ministers within the Church, it is nevertheless sacred, because the Holy Spirit mystically gives it life—the same who formerly appeared in visible works in apostolic times. The sacraments are neither enlarged by the merits of good dispensers nor diminished by those of evil ones, because "neither he who plants is anything, nor he who waters, but God who gives the increase." This is to be understood and held concerning the body and blood of our Lord Jesus Christ, and also concerning baptism and chrism, because divine power operates more secretly in them; and this power or potency belongs to divinity alone, not to human efficacy. We therefore pollute the bread, that is, the body of Christ, when we approach the altar unworthily and, being filthy, drink the clean blood. And below: § 5. "I will curse," he says, "your blessings": that is, the things which you now possess by my blessings, or whatever is blessed by you, either because they do not bless holy persons from a true heart, or because those who act iniquitously are blessed by them and they flatter sinners, provided that they are rich.

C. LXXXV. We ought to consider not the life of priests but the things which they teach and minister.

Likewise Pope Fabian to the Eastern Bishops, [epistle II]. You have indicated, moreover, that very many pay attention to the fact that many persons in ecclesiastical honors themselves do not live in a manner consonant with the discourses and sacraments which are ministered through them to the peoples. O wretched men, who, while looking at these persons, forget Christ! Long before, he both foretold that the law of God was to be obeyed rather than that those who do not do the things they say should appear to be imitated, and, tolerating his betrayer to the end, sent him also to evangelize with the others. For the Apostles neither had such a custom nor taught that it should be had.

C. LXXXVI. On the same.

Likewise Pope Nicholas to Emperor Michael, [in the epistle which begins, "We had proposed"]. You must take great care to consider not what sort the Lord's priests are but what they say concerning the Lord; nor, in the vicars of blessed Peter the Apostle, must you attend to what they are, but to what they strive to accomplish for the correction of the churches and for your salvation. For you will not call them inferior to the scribes and Pharisees sitting upon the chair of Moses, concerning whom the Lord commanded, saying: "Whatever they tell you, do; according to their works, do not do."

Therefore, Emperor, consider: if he said that those who sat upon the chair of Moses were to be heard, how much more do you judge that those who sit upon the chair of Peter are to be obeyed?

C. LXXXVII. The uncleanness of priests does not pollute the sacrament.

Likewise Augustine against Petilian, [book II, c. 22]. The Lord declared that, in one assembly of persons receiving the same sacraments, the uncleanness of some does not harm the clean. § 1. Petilian said: "But if anyone should hold the formulas of a priest in memory, is he thereby a priest because with sacrilegious mouth he publishes the formula of a priest?" Augustine responded: You say this as though we were now asking who is a true priest and not what is true baptism. For in order that anyone be a true priest, he must be clothed not only with the sacrament but also with justice, as it is written: "Let your priests be clothed with justice." But one who is a priest by the sacrament alone, as was the high priest Caiaphas, persecutor of the one and truest priest, although he himself is not truthful, what he gives is nevertheless true if he gives not his own but God's. Likewise: § 2. "Cretans, evil beasts, sluggish in heart." Therefore, if the Apostle himself also bore witness to the testimony of some foreigner because he discovered it to be true, why do we not distinguish, wherever we find that which is Christ's and is true—even if the man in whom it is found is perverse and false—the truth, which he has not as his own but as Christ's, from the vice which the man has, and say, "This sacrament is true," just as he said, "This testimony is true"? Do we therefore say, "The man himself also is truthful," because we say, "This sacrament is true"? § 3. But you must always err so long as you violate God's sacraments because of the vices of men, or think that we also assume the sacrilege of your schism because, on account of God's sacraments which we do not wish to violate in you, we do not violate them. Likewise: § 4. Therefore, the purity of baptism is altogether distinct from the purity or uncleanness of the conscience either of the giver or of the receiver. Likewise: § 5. Remember that the morals of evil men do not harm the sacraments of God, so as to make them either nonexistent or less holy. Likewise: § 6. If Saul did not have the sanctity of the sacrament, what did David venerate in him? But if he had innocence, why did he persecute the innocent? For because of the sacrament of anointing David both honored him while alive and avenged him when slain. And because he cut even a little piece from his garment, he trembled when struck in heart. Behold, Saul did not have innocence and nevertheless had sanctity—not of his own life, for this cannot exist without innocence, but of God's sacrament, which is holy even in evil men. Likewise: § 7. We say that the sacrifice becomes for each person such as is the person who approaches to offer it and such as is the person who approaches to receive it, and that those eat from the sacrifices of such persons who approach it as such persons as they themselves are. Accordingly, if an evil man offers to God and a good man receives from it, it is for each such as each has been, because it is also written: "All things are clean to the clean." Through this truthful and catholic sentence, even you were not polluted by the sacrifice of Optatus if his deeds displeased you. For surely his bread was bread of mourning, under whose iniquities all Africa mourned; but the common evil of the schism of all of you makes the bread of mourning common to you all. Likewise: § 8. Thanks be to God, because at last you have confessed that the name of Christ when invoked can avail for the salvation of others, even if it is invoked by sinners. From this, therefore, understand that when Christ's name is invoked, the sins of another do not harm the salvation of others.

C. LXXXVIII. Even through an evil minister, the gifts of God reach those who receive them with faith.

The same in the book of Psalms. What has Christ done to you, who bore his betrayer with so great a patience that he handed to him, as to the other Apostles, the first Eucharist confected by his own hands and commended by his own mouth? What has Christ done to you, who sent that same betrayer of his—whom he named a devil, who before the betrayal of the Lord could not display faithfulness even toward the Lord's moneybags—with the other disciples to preach the kingdom of heaven, so as to show that the gifts of God reach those who receive them with faith, even if the one through whom they receive them is such as Judas was?

C. LXXXIX. The wickedness of a bishop does not harm the sacraments. Likewise Gregory.

The wickedness of a bishop harms neither the baptism of an infant nor the consecration of a church, because baptism is given by God and does not come from man; so also the Eucharist and all other things whatsoever which are placed upon the altar receive sanctification not from man but from God. GRATIAN. But that saying of Jerome on Zephaniah is objected, [c. 3]:

C. XC. Not the words but the merits of the priest make the Eucharist.

Priests who serve the Eucharist and distribute the blood of the Lord to his peoples act impiously against the law of Christ, thinking that the words of the one invoking make the Eucharist, not his life, and that only the solemn prayer is necessary and not the merits of priests, concerning whom it is said: "A priest in whom there has been any blemish is not to approach to offer oblations to the Lord."

C. XCI. The worthier priests are before God, the more readily they are heard.

Likewise Alexander, [epistle II]. The priests themselves intercede for the people and eat the sins of the people, because by their prayers they erase and consume them; the worthier they have been, the more readily they are heard in the necessities for which they cry out.

C. XCII. The Holy Spirit is not present to sacraments which are ministered through criminals.

Likewise Gelasius to Bishop Elpidius. The sacrosanct religion which contains catholic discipline claims so great a reverence for itself that no one should dare to approach it except with a pure conscience. For how will the heavenly Spirit, invoked for the consecration of the divine mystery, come if the priest who entreats him to be present is condemned as full of criminal actions?

C. XCIII. An unclean hand contaminates, rather than cleanses, the things it touches.

Likewise Gregory in the Register, [book I, epistle 24]. The hand which takes care to wash away filth must be clean, lest, if it is filthy, it contaminate more grievously whatever it touches, holding mud after it; for it is written: "Be cleansed, you who carry the vessels of the Lord." For those carry the vessels of the Lord who undertake by the example of their conduct to lead the souls of their neighbors to interior things.

C. XCIV. The word of Christ and the body of Christ are equally to be guarded.

Likewise Augustine, [book of Fifty Homilies, homily 26]. I ask you, brothers or sisters, tell me: which seems greater to you, the body of Christ or the word of Christ? If you wish to answer truly, you ought to say that the word of God is not less than the body of Christ. And therefore, with as great a care as we observe, when the body of Christ is ministered to us, that none of it fall from our hands to the ground, with as great a care let us observe that the word of God which is dispensed to us not perish from a pure heart while we either think or speak of something else; because one who has heard the word of God negligently will be no less guilty than one who has permitted the body of Christ to fall to the ground through his negligence.

[C. XCV.]

Likewise, [book IV *On the Trinity*, c. 14]. For it cannot be rightly offered except through a just and holy priest, nor can that which is offered be received except by those for whom it is offered, and it must be without vice so that it can be offered for cleansing the vicious. Certainly all who wish a sacrifice to be offered to God for themselves desire this. GRATIAN. When the life of priests is said to be necessary to the Eucharist, this is to be understood not for consecration but for its effect; for it does not confer the effect of salvation upon one whom his merits make unworthy. Rather, that saying of the Apostle is fulfilled in him: "He who eats and drinks unworthily eats and drinks judgment for himself." Therefore, that saying of Jerome is understood to have been spoken against those who think they can be cleansed by the frequent offering of sacrifice while not ceasing to act impiously against the law of God. But that a priest, even if evil, nevertheless transmits grace to men according to the office of his dignity is attested by Augustine in the book *Questions of the Old Testament*, [c. 11]:

C. XCVI. Priests invoke the name of the Lord, but the Lord bestows the blessing.

It was said by the Lord to Aaron in Numbers: "You place my name upon the sons of Israel; I, the Lord, will bless them," so that the transmission of grace through the ministry of an ordained person may pour it forth upon men, and neither the will of the priest may harm or profit, but the merit of the one seeking the blessing. § 1. Moreover, we perceive from this how great is the dignity of the priestly office or order. Among other things it was said concerning the most wicked Caiaphas, killer of the Savior: "He did not say this of himself; but, since he was high priest of that year, he prophesied." Through this it is shown that the Holy Spirit of graces follows not the person of the worthy or unworthy man but the order of transmission, so that although someone may be of good merit, nevertheless he cannot bless unless he has been ordained so that he may perform the office of ministry. But it belongs to God to bestow the effect of the blessing. GRATIAN. The assertion that sacraments of dignity ministered through heretics lack effect is rejected by the authority of Pope Anastasius, who approves the ordination of Acacius, although a heretic, as ratified in such a way that he asserts that the guilty person did no harm at all even to those whom Acacius baptized or ordained after his condemnation. But Felix and Gelasius, who excommunicated Acacius before Anastasius, and Hormisdas, who, third after that Anastasius, condemned the same Acacius, prove that he did this illicitly and uncanonically, indeed contrary to the decrees of his predecessors and successors. Hence he is also repudiated by the Roman Church, and is read in the deeds of the Roman Pontiffs to have

been struck by God in this manner: "Anastasius the Second, a Roman by nation, etc." Seek this above in the treatise on decretal epistles.

Likewise that saying of Augustine to Parmenian concerning even condemned heretics is objected:

C. XCVII. One who departs from the Church loses neither baptism nor the power of giving it.

What certain persons say—that one who departs from the Church does not lose the baptism which he received but does lose the right of giving which he received—appears in many ways to be said fruitlessly and vainly. § 1. First, because no reason is shown why one who cannot lose baptism itself can lose the right of giving it. For each is a sacrament and each is given to a man by a certain consecration, the one when he is baptized, the other when he is ordained; therefore neither is permitted to be repeated by a catholic. § 2. For if at any time even prelates coming from that party have been received for the good of peace after the error of schism was corrected, and if it seemed needful that they should exercise the same offices which they had exercised, they are not to be ordained again; but just as baptism, so ordination remained integral in them, because the vice was in the severance—which was corrected by the unity of peace—not in the sacraments, which are the same wherever they are. And when it seems expedient to the Church that their prelates, coming to catholic fellowship, should not administer their honors there, nevertheless the sacraments of ordination themselves are not taken away from them, but remain upon them. And therefore the hand is not imposed upon them, lest injury be done not to the man but to the sacrament itself. § 3. But just as in baptism there is something which can be given through them, so in ordination there is the right of giving. They have each to their own perdition so long as they do not have the charity of unity. Nevertheless, not to have is one thing, to have perniciously another, and to have salvifically another. Whatever is not possessed must be given when there is need that it be given; but as for that which is possessed perniciously, when perdition has been driven away through correction, it must be brought about that it be possessed salvifically. If a layman, compelled by necessity, has given baptism to someone who is perishing—baptism which, when he himself received it, he learned how it was to be given—I do not know whether anyone would say that it was piously to be repeated. If it is done when no necessity compels, it is a usurpation of another's office. But if necessity presses, it is either no offense or a venial one. But if it is usurped when there is no necessity and is given by anyone to anyone, that which has been given cannot be said not to have been given, although it can rightly be said to have been given illicitly. Therefore, the disposition of one remembering and repenting corrects the illicit usurpation. But if he has not corrected it, what has been given will remain for the punishment of the usurper—either of the one who illicitly gave it or of the one who illicitly received it—yet it will not be held as not given. § 4. For if some persons, secretly and extraordinarily, not in the public mints, had stamped gold or silver by striking it, when it had been discovered, would not the recognized royal mark, after those persons had been punished or freed by indulgence, be gathered into the royal treasuries? And a little later: § 5. If perhaps one who is not serving as a soldier has fearfully recoiled from the military character upon his body, fled to the emperor's clemency, and, after obtaining pardon, then begun to serve as a soldier, is that character repeated after the man has been freed and corrected, and is it not rather recognized and approved? Or perhaps do the Christian sacraments have less than this bodily mark, when we see that even apostates do not lack baptism, which certainly is not restored when they return through penance, and therefore is judged incapable

of being lost? § 6. Concerning those who are separated from the unity of the catholic Church there is now no question that they have it and can give it, but they have it perniciously and hand it on perniciously because they are outside the bond of peace. § 7. Injury is to be done to neither sacrament. § 8. Just as one who departs from unity does not have it rightly but nevertheless has it, and therefore it is not restored to him when he returns, so also one who departs from unity does not give rightly but nevertheless gives, and therefore what was received from him is not repeated when the receiver comes to unity. Below: § 1. Just as what the returning person also had outside is not restored to him, so what the arriving person had received outside is not to be repeated. Hence it is consequently understood that the perversity of men is to be corrected, but the sanctity of the sacraments is to be violated in no perverse person. For it is established that it remains unpolluted and inviolable in perverse and criminal men, whether in those who are within or those who are without; and when evil persons are said to pollute it, they are said to do so so far as lies in themselves, although the sacraments remain unpolluted. But in the good they remain unto reward; in the evil they remain unto judgment. Below: § 10. How do catholics not glorify the Lord, when they pursue his sacraments with such due veneration that, even if they have been handled by the unworthy, those men being condemned by their own perversity, the sacraments are shown to remain in undefiled sanctity?

Part XII. GRATIAN. From these words of Augustine it is established that in all persons—apostates as well as heretics or the condemned—the sacraments of Christ remain true in themselves and holy, and, unless aid has been given by penance or indulgence, they arrive at the condemnation of the usurper, whether the one possessing, giving, or receiving. What, then, does it profit that they are true and holy, when they equally destroy their usurpers as if they were evil and noxious? Crassus thirsted for gold and drank gold; he perished by true gold just as by true poison. § 1. Likewise, gold is equally true in the chest of a thief as in the treasures of a king. But it is illicitly given or received by the thief because it is illicitly possessed; by the king, however, it is licitly possessed, given, and received. Therefore, as Gelasius attests to Emperor Anastasius, both the thief himself and the participant in the theft—unless perhaps he has cleared himself of knowledge of the theft—will justly and worthily be condemned. § 2. But the following is opposed to this sentence of Augustine: The power of giving baptism, the right of consecrating the Lord's body, and the right of bestowing sacred orders differ greatly among themselves. For when a priest has been suspended or deposed, no power of sacrificing is left to him. Nevertheless, if the sacrament of baptism has been ministered not only by a deposed priest or catholic layman but even by a heretic or pagan, it will be violated by no repetition; but no reason permits those who receive the oil of sacred—indeed, execrable—anointing from the hands of a layman or pagan to be held among priests. Therefore, it is not consequently gathered that, if the right of baptizing is left to those departing from the faith, the power of distributing sacred orders is also left to them, although each proceeds from consecration. For a degraded bishop does not have the power of bestowing sacred orders, yet he has not lost the faculty of baptizing. § 3. But lest we reject Augustine altogether in this sentence, let us understand that the power of distributing sacred orders is one thing and the execution of that power another. Those who, established within the unity of the catholic Church, receive priestly or episcopal anointing obtain from consecration both the office and the execution of their office. But those departing from the integrity of the faith retain, as far as the sacrament is concerned, the power received, but are wholly deprived of the effect of their power, just as married persons who depart from one another do not dissolve the marriage once entered upon, yet

are found estranged from the conjugal work. § 4. Therefore, Augustine speaks concerning those who, after receiving priestly power, depart from the unity of the catholic Church, not concerning those who, while established in schism or heresy, receive priestly anointing. Otherwise, he would be contrary to the Council of Chalcedon, in which those ordained by simoniacs are judged to profit in nothing, and to Innocent, who attests that those ordained by other heretics obtained through a depraved imposition of the hand only condemnation and a wound of the head. § 5. Although it can be said generally that sacraments which are celebrated among heretics no differently than in the Church of God are true and ratified in themselves, but false and empty as to effect, both in those by whom they are wickedly handled and in those by whom they are wickedly received. Nor is this marvelous. For our Salvation himself gave the morsel to Judas; immediately with the morsel not a good but a malignant spirit entered. Why? Not because the good one did not give a good thing, but because the evil man received the good thing wickedly; and thus the good thing did not have a good effect because it did not find a place in which to produce it. § 6. Likewise, the Lord was present in his own country, present and true; not through an evil minister but through himself he could do nothing, because he did not find faith. Because of the perfidy of others, he did not lack his own truth but the effect of good power. § 7. To show this plainly in all the sacraments, he was transfigured twice while he was in the flesh. In one transfiguration he appeared marvelous like the sun, so that the faith of believers might be increased to contemplate heavenly glory raised above itself. In the other, as a stranger and unrecognizable to those doubting concerning him, he feigned that he was going farther, and held their eyes lest he be recognized. For what else, except that, because he was not in their hearts through faith, he showed himself departing farther from them; and because they did not believe him to be what he was, they also saw him as other than he was? Behold, in each vision there was his presence and truth; but in one, faith was exercised so that they might believe more than they believed, while in the other, unbelief was restrained lest they recognize even what they saw. Therefore, the sacrament of his body and blood is for some unto salvation, for others unto judgment. Faith also, although true, is nevertheless dead without works. So also all ten virgins were equally virgins, but of these five were foolish and five prudent. The truth of virginity was equal, but because of the intention of that same virginity, the identity of merit was not equal in all. So also martyrdom or almsgiving which does not know charity is sounding brass or a tinkling cymbal. If a blind man ministers the truth of a lamp to a blind man, nevertheless neither thereby illumines his own blindness more. So also an evil man ministers true sacraments to an evil man, but not thereby spiritual gifts, because the Holy Spirit is impeded by their evil merits from working in them that which is his own. Hence Innocent, although conceding that the baptism of heretics is ratified, nevertheless does not concede that the Holy Spirit is possessed from that baptism. And Leo does not permit those who received the form of baptism to be rebaptized, but commands that through his invocation and the imposition of the hand they obtain from catholic priests the Holy Spirit, whom no one received from heretics. It must be known, moreover, that the sacraments of heretics are called invalid, or even damnable, false, and empty, not in themselves, since they are holy and true even when celebrated by a heretic, but because, while they are unto judgment for the perfidious who give them illicitly, they do not confer the Holy Spirit upon those who receive them illicitly. They are called invalid and untrue because they do not bestow what they promise and are believed to confer, and therefore damnable, so that the giving or receiving of them from heretics is not approved but interdicted. For they are not polluted in themselves, although they are said to be polluted by heretics.

Hence Gregory calls the communion of Arius an execration, and Innocent calls the ordination of Bonosus a condemnation—not because they are such in themselves, but because they effect this for those who give or receive them wickedly. So also Jerome on Hosea calls their sacrifices the bread of mourning, not in themselves but as to effect, which he himself shows, adding: "Whoever eat of it will be contaminated, because they receive it unto judgment for themselves." Hence also Augustine in book II *Against the Epistle of Parmenian*, [c. 5]:

C. XCVIII. Although the sacraments harm those who handle them unworthily, they nevertheless profit those who receive them worthily through such persons.

Through Isaiah the Lord says: "The criminal who sacrifices a calf to me is as though he killed a dog; one who prepares fine flour, as though swine's blood; and one who offers incense as a memorial, as though a blasphemer." § 1. Whoever, wherever he may offer sacrifice, does so with such a heart or deeds that he merits to hear this, brings perdition upon himself, not upon those good persons who receive from such persons the same sacraments, who according to the prophet Ezekiel groan and mourn the sins and iniquities which are performed in their midst, although they do not separate themselves bodily from them. Below: § 2. The sacrifices of the impious harm those who offer impiously. For it is one and the same sacrifice because of the name of the Lord which is invoked there, and it is always holy, and it becomes for each such as the heart with which he has approached to receive it. "For he who eats and drinks unworthily eats and drinks judgment for himself"—not for others, but himself. Below: § 3. We admonish that this is to be understood in almost all questions of this kind: namely, that although all the sacraments harm those who handle them unworthily, they nevertheless profit those who receive them worthily through such persons. Below: § 4. The Holy Spirit is present in a prelate or minister of the Church in such a way that, if he is not false, he operates through him both his reward unto eternal salvation and the regeneration or edification of those who through him are either consecrated or evangelized. But if he is false, because it is most truly written, "The Holy Spirit of discipline will flee the false," although he is absent from the man's salvation and removes himself from his thoughts, which are without understanding, he nevertheless does not desert his ministry, through which he operates the salvation of others by means of him. GRATIAN. It is therefore established, as Innocent says concerning other heretics, that those ordained by simoniacs have a head wounded by the depraved imposition of the simoniacal hand. § 1. But it is objected that in the ordination of simoniacs this alone is found reprehensible: that the grace of the Holy Spirit is thought to be reduced to a price; in other respects, however, the integral form of the sacraments is preserved in all things. Therefore, when the illicit usurpation of the sacrament has been corrected through penance, so that the grace of the Holy Spirit is thought gratuitous and not saleable, the integral effect of the anointing ought to be present. Indeed, even if penance does not follow, although consecrated simoniacally, he is nevertheless to be reckoned truly consecrated, just as those who formerly were admitted to the regeneration of sacred baptism and participation in holy communion only after a price had been given, although simoniacally, nevertheless were not for that reason reckoned any less baptized or participants in holy communion. But this alone was established by the sacred canons: that thereafter the sacraments of Christ are not to be distributed simoniacally.

Hence Gelasius, [to the Bishops throughout Lucania, epistle I, c. 7]:

C. XCIX. Prices are not to be exacted from those to be baptized or signed.

Let priests set no prices for the faithful who are to be baptized and signed, nor desire to harass those being reborn by imposing any payments, because we are commanded freely to give what we freely received. And therefore let them not attempt to exact anything at all from the aforesaid persons, lest, either deterred under compulsion of poverty or turned away by indignation, they rightly despise the causes of their redemption; holding it certain that those who are discovered to have admitted prohibited things, or rather have not of their own accord corrected things committed, will undergo the peril of their own honor.

C. C. A price ought not to be exacted from one receiving the grace of communion.

Likewise from the Sixth Synod, [c. 23]. Let no bishop, priest, or deacon who dispenses sacred communion exact any price from the one receiving the grace of communion. For grace is not sold, nor do we give the grace of the Holy Spirit for a price, but we concede to the worthy that they participate in the gift without deprivation. But if any of those numbered among the clergy has exacted any price from one to whom he dispenses sacred communion, let him be deposed as an imitator of simoniacal fraud.

C. CI. Gifts of invisible grace are not to be acquired by profits.

Likewise from the Eleventh Council of Toledo, [c. 8]. Whatever is bestowed by the consolation of invisible grace ought never at all to be sold for profits or any rewards, as the Lord says: "Freely give what you have freely received." And therefore, whoever hereafter, being established in ecclesiastical order, has received any prices or rewards—unless voluntarily offered—for baptizing and signing the faithful, for chrism, or for promotions of grades, through ambition of this kind: indeed, if with the bishop of the place knowing it anything of this kind has been perpetrated by his subjects, that bishop is to be subjected to excommunication for two months, because by his knowledge he concealed evils and did not procure the necessary correction. But if, without his knowing it, any of his men has believed that he was to receive anything under the aforesaid heads, if he is a priest, let him be punished with four months' excommunication; if a deacon, three; but a subdeacon or cleric serving these cupidities is to be punished with a suitable penalty and the excommunication due.

C. CII. Nothing is to be exacted by priests for the balsam which is placed in chrism.

Likewise from the Second Council of Braga, [c. 4]. It has pleased the council that no bishop exact anything further for the small amount of balsam, blessed for the sacrament of baptism, which is given throughout the churches—because they are accustomed individually to exact a tremissis for it—lest perhaps, just as Simon Magus wished to buy the gift of God with money, we who sell that which is consecrated for the salvation of souls through the invocation of the Holy Spirit be damnably sold.

C. CIII. Nothing is to be exacted from those who bring their infants to be baptized.

Likewise from the same, [c. 7]. It has pleased the council that each bishop bring this about throughout his churches: that if those who offer their infants for baptism voluntarily offer anything

according to their vow, it is to be received from them. But if through the necessity of poverty they do not have anything to offer, let no pledge be violently taken from them by clerics. For many poor persons, fearing this, withdraw their children from baptism; if perhaps, while it is deferred, they depart this life without the grace of baptism, it is necessary that their perdition be required from those through fear of whose depredations they withdrew themselves from the grace of baptism.

C. CIV. Let no one compel those who are baptized to put coins into the basin.

Likewise from the Council of Elvira, [c. 48]. It has pleased the council that this be corrected: that those who are baptized not put coins into the basin, as was customarily done, lest the priest appear to sell for a price what he received freely. Nor are their feet to be washed by priests or clerics.

C. CV. Nothing ought to be exacted for the reception of chrism or baptism.

Likewise from the Council of Tribur. It was said that in certain places coins customarily are given for the reception of chrism, similarly for baptism and communion. The holy synod detested and anathematized this as simoniacal heresy, and established that thereafter they exact nothing either for ordination, chrism, baptism, balsam, burial, or communion; but let the gratuitous gifts of Christ be given by gratuitous dispensation.

C. CVI. Nothing is to be exacted either for dedicating basilicas or for conferring the other sacraments.

Likewise from the Council of Chalon, [in the time of Charlemagne, c. 16]. We establish that, just as nothing is to be received for dedicating basilicas and giving orders, so also priests who are to receive chrism are to give nothing either for balsam or for buying lights. Accordingly, let bishops buy balsam from the resources of the Church, and each the lights in his churches. Part XIII. GRATIAN. Therefore, just as these sacraments, although ministered simoniacally, nevertheless confer the effect of blessing upon the receiver, so also priestly anointing, although ministered simoniacally, nevertheless ought not to lack its effect. But, as was said above, those sacraments are of necessity, this one of dignity, and therefore their privileges cannot generate the common law of these. Simoniacs, therefore, have a wounded head through the depraved imposition of a simoniacal hand. But this is understood of those whom neither ignorance nor the violence of being dragged excuses, who are ordained by persons whom they indubitably know to be simoniacs, whether they are ordained by them simoniacally or non-simoniacally. For, as Pope Nicholas distinguishes, some are ordained simoniacally by simoniacs, others simoniacally by non-simoniacs, others non-simoniacally by simoniacs. He indicates this distinction in chapter II, saying:

C. CVII. Concerning the manifold kind of simoniacs.

We have established a decree concerning simoniacs who simoniacally ordain or are ordained, concerning simoniacs ordained simoniacally by non-simoniacs, and concerning simoniacs ordained non-simoniacally by simoniacs. § 1. Let simoniacs simoniacally ordained or ordaining fall from their own grade according to the ecclesiastical canons. Likewise, let simoniacs ordained simoniacally by non-simoniacs be removed from the office wickedly received. § 2. But simoniacs ordained non-simoniacally by simoniacs we mercifully permit, through the imposition of the hand, to remain in

office because of the necessity of the time. GRATIAN. But this is to be understood of those who are ordained by simoniacs whom they did not know to be simoniacs. Not the guilt of the crime but the ordination of a simoniac makes these simoniacs. Concerning these Pope Urban [II, in the Council of Piacenza, cc. 3 and 4] says:

C. CVIII. Concerning those who are ordained non-simoniacally by simoniacs.

If any have been ordained by simoniacs non-simoniacally, provided they can prove that when they were ordained they did not know those persons to be simoniacs, and those persons were then held as catholics in the Church, we mercifully sustain the ordinations of such persons, if nevertheless a praiseworthy life commends them. But as for those who knowingly permitted themselves to be consecrated—rather, execrated—by simoniacs, we decree that their consecration is altogether invalid.

C. CIX. Concerning one who is ordained by a person whom he knows to be a simoniac.

Likewise Nicholas the Younger, [the same is Alexander II]. For the future we establish that, if anyone hereafter has permitted himself to be consecrated by one whom he does not doubt to be a simoniac, the consecrator and the consecrated are to undergo no dissimilar sentence of condemnation; but let each be deposed and perform penance, and persist deprived of his own dignity.

C. CX. No mercy is to be bestowed upon simoniacs in preserving their dignity.

The same, [a little below]. We have decreed that no mercy is to be shown toward simoniacs in preserving their dignity, but according to the sanction of the canons and the decrees of the holy Fathers we condemn them altogether and sanction by apostolic authority that they are to be deposed. GRATIAN. It is to be understood: unless he was dragged violently. For concerning these and those violently ordained by any heretics Innocent says, [to the Bishops of Macedonia, epistle XXII, c. 5]:

C. CXI. Concerning those who unwillingly are dragged to the ordination of heretics.

It is established that many persons suffered violence and were dragged unwillingly and, while resisting, were ordained by heretics. But if any such person, after such an ordination, did not participate when they confected the sacraments, if he did not participate in their communion, if, immediately when they departed, he renounced their most evil assembly and returned to the Church, such a man can have some color of excuse. But those who returned after a month or more, when they consider themselves ordained by heretics—certainly persons who received nothing from them—are guilty of usurped dignity. GRATIAN. The imposition of a catholic hand, with satisfaction and the medicine of penance, often reforms such persons from a regard for piety. But we read the condemnation of simoniacs and of those who consented to them; we do not read of an authoritative medicine expressly named for this heresy, except that, just as it was employed among the Novatians or Donatists—lesser heretics, certainly—not canonically but from a regard for piety, so we gather that it can also be done concerning these persons, for this reason also: that in other respects they have the orthodox faith in all things, except that they believe the Holy Spirit to be saleable. And, as blessed Augustine says, when heretics return, let them be healed in that part by which they severed

themselves from the Church, but recognized in that part by which they adhered to her. Hence Leo also writes to Bishop Januarius, [of Aquileia, epistle III]:

C. CXII. Those who return from heresy to the Church may, by benefice, remain in the order in which they are found.

Every cleric of any order who, forsaking catholic unity, has stained himself by the contagion of a heretical or schismatic association, if he returns to the Church with lawful satisfaction and condemnation of his error, is to have this as a great benefice: that, with hope of every promotion taken away, he may remain in the order in which he is found. GRATIAN. But concerning those who are ordained simoniacally by non-simoniacs—for example, those who, after giving money to the archdeacon or the bishop's counselors, with the bishop unaware, bring it about that they receive sacred orders from his hand—Gregory VII writes, [book 6 of the Register, in the Synod held at Rome, A.D. 1078, 19 November, c. 5]:

C. CXIII. Ordinations which are performed simoniacally are adjudged false.

Ordinations which are performed with a price, prayers, or service rendered to some person with that intention intervening, or which are performed without the common consent of clergy and people according to canonical sanctions and are not approved by those to whom consecration pertains, we adjudge to be false, because those who are ordained in this manner enter not through the door, that is, through Christ, but, as the Truth itself attests, are thieves and robbers. Part XIV. GRATIAN. Therefore, because simony is noted in three ways in this chapter, it must be seen in how many ways a price is given in this heresy. Blessed Gregory clearly expounds this in a tractate on the Gospels, [homily 4, at the end], saying:

C. CXIV. Concerning the manifold kind of simoniacs.

There are some who indeed do not receive monetary rewards from ordination, yet bestow sacred orders for human favor and seek from that bestowal only the recompense of praise. Without doubt these do not freely give what they freely receive, because from the office of holiness bestowed they seek the coin of favor. Hence, when the Prophet described a just man, he rightly said: "One who shakes his hands free from every gift." For he did not say only "from a gift," but "from every gift," because one gift is from service, another from the hand, another from the tongue. A gift from service is service unduly rendered. A gift from the hand is money; a gift from the tongue is favor. Therefore, one who bestows sacred orders shakes his hands free from every gift when in divine matters he seeks not only no money but not even human favor.

C. CXV. One who approaches sacred order through any gift will find eternal condemnation.

The same in the Register. If anyone, neither excelling in holy morals nor called by the clergy and people or compelled by their insistence, shamelessly receives the episcopal or priestly dignity of Christ—already polluted by any crime, through unjust love of heart, or sordid entreaties of mouth, or attendance, or manual service, or a fraudulent little gift, supported not by the gain of souls but by avarice for empty glory—and in his life has not left it voluntarily, and unexpected death has not found

him in penance, beyond doubt he will perish eternally. Hence Gregory writes to John, Bishop of Corinth, [book IV, epistle 55]:

C. CXVI. Absolutely nothing is to be received for ordinations.

We have decreed under strict prohibition that anything be received for ordinations. Therefore, you must consent or permit no persons to be brought to sacred orders either through a gift, favor, or the supplication of certain persons.

C. CXVII. Let no persons approach sacred orders by price, favor, or supplication.

The same to all Bishops established throughout the province of Greece, [the same book, epistle 56]. From the accounts of certain persons I have learned that in those parts no one arrives at sacred order without the giving of a benefit. If this is so, I say with weeping and announce with groaning that, when priestly order has died inwardly, outwardly also it will not be able to stand for long. For we know from the Gospel what our Redeemer did through himself: entering the temple, he overturned the seats of those selling doves. For to sell doves is to receive a temporal benefit from the Holy Spirit, whom almighty God, consubstantial with himself, bestows upon men through the imposition of hands. From this evil, as I foretold, it is believed already to have happened that the seats of those who presumed to sell doves in the temple of God have fallen, with God as judge. § 1. This error clearly is propagated with increase among subjects. For each person who is brought to sacred order, being already corrupted in the very root of his advancement, is more ready to sell to others what he bought. And where is that which is written: "Freely you have received; freely give"? And since the simoniacal heresy arose first against the holy Church, why is it not weighed, why is it not seen, that one who ordains another with a price acts by advancing him so that he may become a heretic? And therefore we exhort that none of you permit this to be done again, nor dare to promote anyone to sacred orders either through the favor or supplication of anyone, except one whom the quality of his life and action has shown worthy for this. For if we perceive it done otherwise again, know that it will be restrained by strict and canonical vengeance.

C. CXVIII. Let no one approach episcopal honor through canvassing.

Likewise Symmachus, [to Caesarius, epistle I, c. 5]. Therefore, let no one be permitted to approach episcopal honor through canvassing. For since this excess is blamed in lay conduct, who doubts that it brings reproach upon religious persons and those serving God?

C. CXIX. On the same.

Likewise Gregory, [to Bishop Adeodatus, book II, indiction XI, epistle 48]. Be especially solicitous, therefore, in ordination, and by no means admit to sacred orders any except those more advanced in age and clean in work. First examine the life and morals of those who are to be placed in sacred order, and let not the power or supplication of any persons steal upon you against this, so that you may be able to employ persons worthy of this office. Therefore, when it is necessary to treat of these things, employ grave and experienced men as participants in your counsel, and weigh this with them by common deliberation.

C. CXX. Let no one be promoted to sacred orders by favor or venality.

The same to Bishop Columbus, [book II, indiction XI, epistle 47]. Let boys by no means be admitted to sacred orders, lest they fall the more perilously the more quickly they hasten to climb to higher things. Let there be no venality in ordination; let the power or supplication of persons obtain nothing against the things which we prohibit. For beyond doubt God is offended if anyone is promoted to sacred orders not from merit but from favor—which may it not be—or venality. GRATIAN. To the contrary, that same Gregory is read to have ordained one acolyte and another deacon upon the supplication of certain persons, as he himself writes, [book VII, indiction I, epistle 2], to Peter, Bishop of Corsica, among other things:

C. CXXI. With a bishop intervening, the Pope ordained a certain acolyte.

Through the intercession of your holiness we made the bearer of these presents an acolyte and have sent him for service to you, so that, if he has served more in gaining souls, he may be able to advance more.

C. CXXII. Whoever has received sacred order in the Roman Church will thereafter be unable to depart from her.

The same to Elias, priest and abbot, [book IV, epistle 30]. You directed that we should promote your son Epiphanius to sacred order and transmit him to you. But in the one matter we heard you; in the other we could not hear you. He was indeed made a deacon; but whoever has once received sacred order in this Church thereafter has no license to depart from her. Although I was unable to see you, I have consolation from this matter, because I rest in your son. GRATIAN. Therefore, ordinations performed through the prayers of just any persons are not adjudged false, but only those which are performed through the prayers of the person to be ordained or of his friend, offered from a carnal rather than spiritual affection, when otherwise they would not have occurred—ordinations which not intervening charity but supplicating ambition extorts. Moreover, the Supreme Pontiff is able not only to ordain the clerics of any bishop in the Roman Church, but, when opportunity demands, can also summon and invite monks and any clerics whatsoever. Hence Pope Nicholas, [to Emperor Michael, in the epistle which begins, "We had proposed"]:

C. CXXIII. On the same.

Through the preeminent power of the blessed Apostles Peter and Paul, we have the right not only over monks but also, whenever it may be necessary, to summon to us any clerics from any diocese and to invite them when ecclesiastical opportunities demand it. Part XV. GRATIAN. Therefore, when any gift whatsoever intervenes, the ordination is adjudged false. And just as sacred orders are not to be bestowed when a price intervenes, so neither are they to be restored. For, as blessed Ambrose says, sacred orders are neither to be bought for a price nor bought back. Hence Gregory VII also says, [book VI of the Register, in the Council held A.D. 1078, the sixth year of his pontificate, c. 9]:

C. CXXIV. The priestly office is not to be restored when a price intervenes.

Let no bishop impose upon his abbots or clerics a burden or servile service from custom contrary to the ecclesiastical norm, or restore an interdicted priestly office when a price intervenes. If he has done this, let him undergo the peril of his office. GRATIAN. Those who receive money so as not to

bestow sacred orders upon those to be ordained, or so as not to give assent to a canonical election, or who withhold a blessed stone or consecration from churches to be built or consecrated, are proved by many arguments to be guilty and infamous by reason of the money received.

For Paschal II says:

C. CXXV. Those who do not permit churches to be ordered regularly are to be judged sacrilegious.

There are some who, either through violence or favor, do not permit churches to be ordered regularly. We decree that these also are to be judged sacrilegious.

[C. CXXVI.]

In book IX of the Code, under the Julian Law on Extortion, Emperors Gratian, Valentinian, and Theodosius. We command and exhort that, if perhaps anyone among honored men, decurions, possessors, or finally even tenants has for any reason been shaken down by a judge of any order; if anyone knows that a sentence at law was saleable; if anyone knows that a penalty was either remitted for a price or imposed through the vice of cupidity; if, finally, anyone has been able for any reason to prove a corrupt judge: let him come forth in public either while that man is administering or after the administration has been laid down, bring the charge, and prove what is charged; when he has proved it, he will carry away both victory and glory.

[C. CXXVII.]

Likewise in book III of the Digest, in the title *Concerning Calumniators*, Ulpian in book X *On the Edict*, [law] 1. Against one who is said to have received money so that, for the sake of calumny, he would perform or not perform a transaction, within a year an action *in factum* lies for fourfold the money which he is said to have received; after a year, for the simple amount.

[C. CXXVIII.]

In the same place, book XLVII, title [13, law 2], *Concerning Extortion by Intimidation*, Marcellus in book I *On Public Trials*. A trial for extortion by intimidation is not a public trial. But if anyone received money because he threatened an accusation, there can be a public trial under the decrees of the senate by which those who have conspired to accuse innocent persons, or who have received money for accusing or not accusing, denouncing or not denouncing testimony, are commanded to be held under the penalty of the Cornelian Law.

[C. CXXIX.]

In the same place, book XLVIII, title 11, *On the Julian Law on Extortion*, [law 3], Marcellus in book I *On Public Trials*. One is held under the Julian Law on Extortion who, while having some power, received money for judging, not judging, or decreeing; Venuleius Saturninus in book III *On Public Trials*: or so that he would do anything more or less from his office.

[C. CXXX.]

The same, [in the same title, law 6]. Under the same law are held those who have received money for denouncing or not denouncing testimony. § 1. It is provided by the Julian Law on Extortion that no

one receive bronze for selecting or sending a soldier, or receive money for delivering an opinion in the senate or public council, or for accusing or not accusing. § 2. Marcellus in the same place. The Julian Law on Extortion commands that no one receive anything for granting, changing, or ordering a judge or arbiter, or for not granting, changing, or ordering one; or for assessing a suit, or holding or not holding a trial concerning a person or money. § 3. Today they are punished extraordinarily under the Law on Extortion, and very often are punished either by exile or even more harshly, according as they have transgressed. § 4. One condemned under this law is prohibited from giving testimony publicly, being a judge, or making a legal application.

Question II

GRATIAN. Part I. The second question follows, in which it is asked whether money is to be exacted for entrance into a monastery, or, if exacted, is to be paid. That each may licitly be done is proved by the sequence of each Testament. For it is read in the first book of Kings that Hannah brought Samuel with her, after he had been weaned, to the house of God in Shiloh, with three calves, three measures of flour, and an amphora of wine. § 1. But in the Acts of the Apostles it is read that "the multitude of believers had one heart and one soul," nor did anyone say that anything which they possessed was his own, but all things were common to them. Individuals sold their estates and placed their prices before the feet of the Apostles. One of these, named Ananias, when he reserved a part for himself, after receiving a sentence of malediction, fell dead with his wife Sapphira before the feet of the Apostle. § 2. From this it clearly appears that those about to enter a monastery ought to offer their possessions to the rulers and are not otherwise to be received unless they have offered their own things. But to offer of one's own accord is one thing, to pay things exacted another. Hannah, Samuel's mother, offered gifts to the priests not exacted or sought, but of her own accord. The believers of their own accord offered their possessions to the Apostles so that they might serve the necessities of the needy—possessions which the pressing persecution of unbelievers did not permit them to possess. Ananias also was condemned not because he did not wish to offer his possessions, but because, lying to the Holy Spirit, he fraudulently withheld part of the prices of the things which he had offered to the Apostles. Therefore, by these authorities rulers are not permitted to exact anything from those entering, but to receive things voluntarily offered, because the former is damnable but the latter by no means. Hence it is read in the Second Council of Braga, [c. 5]:

C. I. Nothing is to be exacted for dedicating churches.

It has pleased the council that, whenever bishops are invited by any of the faithful to consecrate churches, they do not demand any gift from the founder as though from a debt; but if he himself has offered anything according to his own vow, let it not be rejected, while if either poverty or necessity constrains him, let nothing be exacted from him. Nevertheless, let each bishop remember this: that he not dedicate a church before he has first received the endowment of the basilica and its service confirmed through a charter of donation. For this is no light rashness: that a church be consecrated like a private house without lights or substantial support for those who will serve there. Likewise Boniface, Bishop of the city of Rome, writes to all the monks of the Church of Cagliari:

C. II. Nothing is to be exacted from those who approach conversion, nor is anyone to be invited to conversion for a price.

With how pious an affection of mind, most beloved brothers, the Roman Church suffers with your destitution is perhaps unknown to you, but is held not unknown to the knower of all things. But that we may give a suitable response to your doubt, God is my witness that the doubt itself also renders me anxious and unfit. For we never read that the Lord's disciples, or those converted by their ministry, incited anyone to the worship of God by the intervention of any gift—unless perhaps someone incongruously proposes the nourishment of the poor, to none of whom, of whatever profession he might be, provisions were denied. We know indeed that "every best thing given and every perfect gift is from above"; from him the one who, by the holy judgment of deliberation, resolves freely to serve God receives the gift of good will. It remains, therefore, that one who receives a gift for some reception into a church sells the gift of God which ought to descend from the Father of lights, while the one lavishing the gift buys importunately. But what follows concerning the sellers or buyers of a divine gift need not be stated in conclusion. § 1. Beware, therefore, brothers, how ambiguous is the counsel which you sought, which indeed we find confirmed by no reason according to the purpose of your will. Nevertheless, if the person whom you found is so useful for your necessity—provided that every bargain is absent, every agreement ceases, and no alienation of your church is made—let him approach, let him begin freely to serve God, and let him devotedly perform the service of his governance; and afterward the Roman Church permits you, as though for the sake of assistance, to bestow some gifts of your church for the comfort of the brothers. [Hence Pope Urban in the Council at Melfi, c. 12:

PALEA.

C. III. On the same.

Let no abbot presume, under the occasion of any bargain, to take or exact a price from those who come to conversion. Following the ancient rule, I establish that absolutely nothing is ever to be received from anyone for ordinations, neither from the giving of the pallium, nor from the delivery of charters, nor from that appellation of *pastellum* which a new pretense devised through ambition. For in ordaining a bishop, the Pontiff imposes the hand, the minister reads the Gospel lesson, and the notary writes the epistle of his confirmation.]

C. IV. Nothing ought to be exacted from one ordained, but neither is it fitting to reject things voluntarily offered.

Likewise Gregory in the Register, [book IV, epistle 44, or c. 88, in the Synod held at Rome]. Just as it is not fitting for a bishop to sell the hand which he imposes, so the minister or notary ought not to sell his voice or pen in that man's ordination. § 1. But if the one who was ordained, not from an agreement, nor having been subjected to exaction or petition, after receiving the charters and pallium wishes to offer anything to anyone among the clergy solely for the sake of gratitude, we by no means prohibit this from being received, because his offering, which did not proceed from the petition of an ambitious person, introduces no stain of fault. GRATIAN. By the authority of Boniface it is openly shown that, just as no one is to be invited to conversion for a price, so it is not fitting to grant entrance into a church to anyone by the intervention of money. But by the authority of Gregory it is given to be understood that it is not permitted to exact money for entrance into a church, but it is

permitted to receive money spontaneously offered. Part II. Likewise that saying of the Apostle in [the first epistle] to Timothy is objected, [c. 5, v. 2]:

[C. V.]

"Honor widows who are truly widows. But those who are not truly widows—that is, those who can be supported by their own resources or those of their parents—are not to be received, so that the Church may suffice for those who are truly widows."

C. VI. Those who can be supported by their own expenses are not to receive stipends from the Church.

Likewise Jerome to Pope Damasus. But it is fitting for those clerics to be supported by the stipends of the Church whom no resources of parents or relatives support. But those who can be supported by the goods and resources of their parents, if they receive what belongs to the poor, certainly commit sacrilege and, through an abuse of such things, eat and drink judgment for themselves.

C. VII. Those whose own possessions suffice for their nourishment are not to be supported by the Church.

Likewise Prosper in the book *On the Contemplative Life*, chapter X. A shepherd of the Church ought not to expend anything upon those whose own possessions suffice, since to give to those who possess is nothing other than to lose. Nor do those who possess their own things and wish anything to be given to them receive, without their own grave sin, that from which the poor person was to live. Concerning clerics, indeed, the Holy Spirit says: "They eat the sins of my people." But just as those who have nothing of their own receive not sins but the nourishment which they are seen to need, so possessors receive not nourishment, in which they abound, but the sins of others. GRATIAN. But by these authorities those prohibited from being received by the Church are not those who once were rich and left all things, like Peter, Matthew, and Paul; or distributed them to the poor, like Zacchaeus; or joined them to the things of the Church, like those who sold their estates and placed the prices before the feet of the Apostles so that all things might be common to them. Rather, they are those who, remaining in the homes of their parents or unwilling to leave their own things, desire to be fed from ecclesiastical resources. Concerning these it is added below in the same book of Prosper, [c. 10]:

C. VIII. One who does not wish to leave his own things ought not to be supported by the expenses of the Church.

If anyone for this reason does not wish to leave his own things, so that he may have from which to live, why does he receive that for which he must render an account? Why does he multiply his own sins with those of others? The same: § 1. It is not mine to say what kind of sin those incur who presumptuously receive the food of the poor; they additionally burden with their expenses the Church which they ought to have helped from their own resources, perhaps living in a congregation for this reason: lest they feed any poor persons, lest they receive strangers, or lest they diminish their own estate by daily expenses. § 2. But if they have contributed something from their fruits to the Church as though for their own expense, let them not prefer themselves with empty boasting to those whom the Church feeds and clothes although they have nothing, because one who strips himself of the things of the world, or one who, although he has had nothing, does not desire to have, is more perfect than one who has bestowed something upon the Church from the many things which

he possesses and perhaps boasts of that which he has bestowed. GRATIAN. Behold those who are prohibited from being received by the Church. But those who leave all their own things, distribute them to the poor, or join them to the things of the Church are both laudably to be received by the Church and to be supported by her resources. Hence it is read in the same book, [c. 11]:

C. IX. Those who leave their own things, distribute them to the poor, or join them to the things of the Church laudably dispense ecclesiastical things.

A priest to whom the care of dispensation is committed receives from the people, not only without cupidity but also with praise for piety, things to be dispensed, and faithfully dispenses the things received, because he has either left all his own things to his parents, distributed them to the poor, or joined them to the things of the Church, and through love of poverty has placed himself among the number of the poor, so that he himself, as a voluntary poor man, may live from that from which he ministers to the poor. Clerics also whom birth made poor may, when living with perfection of virtue either in their own homes or in a congregation, receive the necessities of life, because cupidity does not lead them to receive those things, but the necessity of living compels them. § 1. The Apostle appears to speak concerning such persons: "Those who work in the sanctuary eat the things which are of the sanctuary, and those who serve the altar participate with the altar." Unless he wished this to be understood concerning those who contemn their own resources, he would never have added what follows: "Thus also God ordained for those who announce the Gospel to live from the Gospel." Those who wish to possess nothing of their own live from the Gospel; those who neither have nor desire to have anything are possessors not of their own things but of common things. What else is it to live from the Gospel except for the one laboring to receive the necessities of life from that in which he labors? Nevertheless, the Apostle, who preached the Gospel in such a way that he ministered necessities to himself with his own hands, confidently speaks concerning himself: "But I have used none of these things." And why he said this he disclosed in what followed, saying: "It is better for me to die than for anyone to empty my glory." He says that his glory would be emptied if he wished to receive the expense of temporal life from those to whom he preached. For he wished to receive the fruit of his labor not in the present but in the future.

C. X. According to the merit of their labor, let priests distribute ecclesiastical stipends to clerics.

Likewise from the Council of Agde, [c. 36]. Let all clerics who faithfully and vigilantly serve the Church obtain from priests, according to the merit of their service and through the ordinance of the canons, the stipends owed to holy labors. GRATIAN. By the authorities of many it is established more clearly than light that it is not permitted to exact money from those about to enter a monastery, lest both the one who exacts and the one who pays incur the crime of simony.

Question III

GRATIAN. But it is still objected that those about to enter a monastery who give money buy not the purpose of religion but participation in the stipends of the Church. Therefore, since they buy temporal things, not spiritual things, they are by no means to be held simoniacs. § 1. To these things the response is thus: Not only those who receive spiritual things for a price, but also those who

receive temporal things annexed to them, are judged simoniacs. Hence Malachi, speaking in the person of the Lord, says: "Who is there among you who closes the doors and kindles my altar gratuitously? I have no will in you, says the Lord of hosts, and I will not receive a gift from your hand." To close the doors is not an office of a sacred gift, but only annexed to it. Likewise Gregory writes to all the Bishops of Spain:

C. I. Concerning those who dispense sacred orders through the acceptance of gifts.

We have heard, most beloved, what it was proper for us to hear, but certainly it was not pleasing to hear: namely, that there are certain professors of sacred orders who, through the giving or acceptance of gifts, usurp for themselves the churches of God or their benefices. We greatly marvel that you did not correct this crime sharply some time ago; for each is justly to be corrected and removed from the thresholds of holy Church: both the one who lavishes gifts for the ambition of obtaining a church and the one who presumes to accept anything in order that he may enter a church. The former indeed presumes to buy the gift of God, but the latter to sell it. I would also say that this offense is not unlike sacrilege, since that which ought to have been done freely and by the sacred judgment of deliberation is occasioned by a bargain for money. Therefore, dearest brothers, carefully undo the things done in such a manner, prevent those not yet done, and do not hesitate to strike those resisting your commands with the fitting bond of anathema.

C. II. Concerning those who sell churches or ecclesiastical benefices.

The same to the Bishop of Rouen and to all the Gallic bishops. If any giver or receiver has obtained churches of God or ecclesiastical benefices—which some call prebends—through the intervention of money, whether by giving he bought or by receiving he sold, he is not excluded from Simon's perdition. But if he has persevered, let him be punished with perpetual condemnation. For if one who wishes to serve God under the appearance of religion accepts anything, he both loses his merit and is deprived of the benefice accepted. By the force of reason, therefore, he is compelled to restore what he received unjustly and not to retain whatever he had received for the sake of base gain.

C. III. A bishop who sells benefices or ecclesiastical offices is to be suspended from office.

Likewise Pope Gregory VII, [book VI of the Register, in the Synod, c. 4]. If any bishop has sold prebends, archdeaconries, provostships, or any ecclesiastical offices, or has ordained otherwise than the statutes of the holy Fathers prescribe, let him be suspended from office. For it is fitting that, just as he received the episcopate freely, so he should distribute freely the members of that same episcopate.

C. IV. Bishops are permitted to sell neither altars nor prebends.

Likewise from the Council of Pope Urban II held in Auvergne. The question was raised concerning bishops who repeatedly compelled monasteries to redeem for money altars given to them, because a certain practice of simoniacal depravity had now long grown established in parts of Gaul: churches or tithes—which among them are called "altars" in common speech—given to monasteries are repeatedly sold by bishops under cloaked avarice, whenever, to be sure, the clerics whom they call "persons" die or are changed. With God as our author, we drive every venality both from

ecclesiastical things and ministries, and by apostolic authority prohibit this from being done hereafter, just as we also forbid all prebends to be sold. Moreover, whatever altars or tithes monasteries are known to have possessed for thirty years or more under redemption of this kind, we establish that they shall possess them henceforth peacefully and without any molestation. § 1. The annual due of the bishops which they were accustomed to have from those same altars is, of course, reserved.

C. V. Whatever is acquired in sacred orders by money given or promised is to be held void.

The same, [in the Council of Piacenza, cc. 1 and 2]. We too confirm, both by judgment and by apostolic authority, the things established by the holy Fathers concerning simoniacs. Therefore, whatever has been acquired in sacred orders or ecclesiastical things by money either given or promised, we decree to be void and never to obtain any force.

C. VI.

Whatever is possessed is understood under the name of money. Likewise Augustine, *On Christian Doctrine*. Everything whatsoever that men have on earth, all the things of which they are masters, are called money: a slave, vessel, field, tree, cattle; whatever is among these is called money. § 1. It is called money for this reason: because the ancients had what they possessed in cattle.

C. VII. Those who buy ecclesiastical benefices are proved also to buy churches.

Likewise Pope Paschal. If anyone objects that consecrations are not bought, but rather the things which arise from consecration, he is proved utterly foolish. For since a corporate church, such as a bishop, abbot, or something of that kind, profits nothing without corporeal things, just as a soul does not live bodily without a body, whoever sells either one of these things, without which the other does not arise, leaves neither unsold. Therefore, let no one buy a church or prebend or anything ecclesiastical, nor pay a *pastellum* or a meal before or afterward for such a thing.

C. VIII. Why investiture of a church by laymen is not prohibited by the Gospel.

Likewise Urban [II], Bishop, servant of the servants of God, to his beloved son L., Provost of the church of Saint Vincent at Pavia, greeting and apostolic blessing. The Savior foretells in the Gospel that near the end of the age false Christs and false prophets will arise and seduce many, and that his faithful will suffer many afflictions in the world, but nevertheless that the gates of hell will not prevail. Therefore—just as the Apostle says, "There must be heresies, so that those who are approved may be made manifest"—we must rise up in opposition with the Prophet and set up a wall for the house of Israel, and with the Apostle enter the kingdom of God through many tribulations, since the sufferings of this time are not worthy to be compared with the future glory which will be revealed in us. § 1. Therefore, because you made known to us that this objection is put to you—whether it is simoniacal to sell an ecclesiastical thing—that this is simoniacal is openly gathered from what the blessed Apostle says to Simon: "May your money be with you unto perdition, because you thought the gift of God to be possessed by money." The Holy Spirit is indeed the gift of God, and a thing offered to the Church itself is a gift of God. And, if you attend carefully, Simon Magus, who

approached the faith, wished to buy not the Holy Spirit, of whom he was himself unworthy—for, as it is written, "The Holy Spirit of discipline will flee the false"—but his gift, so that from the sale of the signs which would be performed through him he might gain multiplied money. Nor did the Apostle abhor in that Simon the purchase of the Holy Spirit—which he knew could not rightly be made—but the ambition for such gain and the avarice which is the service of idols, and he struck it with the dart of a curse. Therefore, whoever sells or buys ecclesiastical things—which are gifts of God, given by God to the faithful and by the faithful to God, and which are received freely from him and therefore ought to be given freely—for the sake of his own gains, thinks with that same Simon that the gift of God is possessed by money. And therefore, one who bestows or obtains them not for that for which they were instituted, but for his own gains, through a service of the tongue, an undue service, or money, is a simoniac, since Simon's principal intention was the sole cause of money, namely avarice, that is, idolatry, as the Apostle Paul says. Otherwise, why does the Synod of Chalcedon of 630 bishops so prohibit the procurator or defender of a church, or anyone subject to a rule, from being ordained through money that it also anathematizes the intermediaries of so great a crime, unless it judges them to be simoniacs? But if the aforesaid soldiers of the Church are thus struck for a crime of this kind, no wise person will deny that those not serving the Church ought to be struck much more damnably for this cause, that is, for selling or buying. But our blessed predecessor Paschal affirms concerning consecration that whoever sells either of those things without which the other does not arise leaves neither unsold, and through this he understands that one who sells or buys a thing of the Church is a simoniac. § 2. Under the name of procurator, the aforesaid synod understands any administrator of ecclesiastical things, as, for example, a provost, economist, or *vidame*; under the name of defender, an advocate or castellan, and a judge; under one subject to a rule, an archpriest, archdeacon, canon, monk, or anyone assigned to ecclesiastical office. § 3. But that one who sells or buys a provostship or something of this kind sells or buys the Holy Spirit, so far as lies in him, hear Augustine upon John:

"O how many provostships they divide off! Primianus has one provost at Carthage, Rogatus another in Mauretania, that man or this another in Numidia, whom we no longer suffice even to name. Therefore someone goes around to buy the dove; each praises his own provost whom he sells, etc." Behold, the venerable Augustine, treating the alienation of a provostship, understands under the name of the dove the sale or purchase of the Holy Spirit, as do all the expositors of this Gospel chapter. § 4. It must be considered with what penalty those who sell or buy things already offered to God and his Church are to be punished, if those who sold or bought the things to be offered to God were driven out of the temple of God with whips. If it was said concerning the sellers or buyers of things to be offered, "You have made my Father's house a house of business and a den of robbers," what will be said concerning the sellers or buyers of things already offered to the Church? § 5. And lest some madman object that the Lord rightly punished this so bitterly because those things were then sold in God's temple, whereas ecclesiastical things are now alienated outside the temple, attend to Augustine above: he does not delimit the place for the sale or purchase of provostships, but only says indefinitely, "Someone goes around to buy the dove; each praises his own provost whom he sells," not adding "inside the temple" or "outside the temple." Let these things suffice against the sellers or buyers of sacred things.

C. IX. The ministers and servants of a church are to be ordained by bishops without any venality.

Likewise Alexander [II], Bishop, servant of the servants of God, to the clergy and people of the church of Lucca in perpetuity. We have learned that for a long time this detestable evil has become established within your church: that an ecclesiastical benefice was never conceded to any cleric, however religious and however endowed with knowledge and morals, except to one who had endeavored to buy it with the profane gift of money; and thus the church and its property were made venal, like some earthly and cheap merchandise exposed to sale by merchants. How detestable this evil is and how contrary to God and the saints both the sacred canons teach and is manifest to nearly everyone. This sentence is found in the second chapter of the Synod of Chalcedon. § 1. For the Council of Chalcedon, one of the principal councils, condemns with a similar penalty those who acquire an ecclesiastical benefice through the intervention of money and those who are known to bargain for the sacred imposition of the hand, through which the Holy Spirit is conferred. By its unconquerable authority it commands each group to be expelled: the former from the benefice, the latter from sacred order. Hence the Redeemer of the human race, driving all buyers and sellers from the temple, overturned the seats of those selling doves and poured out the money of the money-changers, declaring by the authority of his command and saying: "Do not make my Father's house a house of business." § 2. In that same deed consider this also carefully: nowhere through the whole text of the holy Gospel is the Lord found to have corrected sinners with such severity and so strict a censure of justice, since he not only rebuked them in speech but, also in deed, striking them with a whip of cords, drove them all from the temple, openly showing that such traders are not to be corrected like other sinners but are to be cast far from the temple of God, that is, from holy Church. For just as those who endeavor to sell the sacred imposition of the hand are denoted by the sellers of doves, so the sellers of ecclesiastical benefices are designated by the money-changers, who, as the Gospel testifies, make the house of God a den of robbers. § 3. For this reason I, Alexander, bishop—or rather unworthy minister—of the holy Roman Church and Apostolic See, perceiving so many and so great evils to be done in many churches, and especially in the church of Lucca, from wicked covetousness, have decreed to extirpate and root them out entirely, lest the blood of the wicked be required from our hand by the strict Judge. We therefore establish and confirm by the present decree, just as our predecessors are known to have done of old, that henceforth no bishop shall ever dare to confer upon clerics a benefice of a church—which some call a canonry or prebends—or even orders, for any price or gift, but that they shall take care to ordain all ministers and servants of the Church in holy Church freely and without any venality. Nor shall they choose in the house of the Lord those who bring larger sacks of money, but those who, rich in morals and knowledge, are able to sustain the Church herself according to their office. We establish and confirm in the same way that no cleric of whatever grade shall dare to contribute anything for an ecclesiastical benefice, whether for the fabric of churches, as gifts to churches, or even as something to be given to the poor, because, as Scripture testifies, one who accepts something wickedly in order to dispense it well is burdened rather than helped. But if anyone, unmindful of divine precepts and of the salvation of souls, led by wicked covetousness presumes with rash daring to buy or sell the aforesaid ecclesiastical benefice, we decree, as was defined in the Council of Chalcedon, that he shall be subject to the peril of his grade; nor may he minister in the church which he desired to make venal for money; and in addition,

pierced by the blade of a terrible anathema, unless he comes to his senses, let him be severed in every way from the Church of God, which he injured.

C. X. Those who sell or buy the gifts of God are equally condemned by God.

Likewise Gregory, homily XIII. Christ drove the sellers and buyers from the temple because he condemns either those who confer the imposition of hands for a gift or those who strive to buy the gift of God. Likewise: § 1. Sellers in the temple are those who grant for a reward what belongs to certain persons by right. For to sell justice is to observe it for the acceptance of a reward. Buyers in the temple, however, are those who, while unwilling to render to a neighbor what is just and while scorning to do a thing owed by right, purchase sin by giving a price to patrons.

C. XI. Those who do not exercise freely the grace which they receive from God are sellers of doves.

Likewise Bede, [on John c. 2]. Those alone are not sellers of doves and makers of the house of God into a house of business who seek sacred orders by offering a price of money, praise, or even honor; but also those who exercise a grade or spiritual grace in the Church which they received through the Lord's generosity, not with simple intention, but for the sake of any human recompense, contrary to that saying of the Apostle Peter: "Whoever speaks, as the words of God; whoever ministers, as from the power which God supplies, so that God may be honored in all things." Therefore, whoever are such, if they do not wish to be taken from the Church when the Lord comes, let them take these things away from their deeds, lest they make the house of God a house of business. GRATIAN. Teaching that no one ought to convert to his own right, either by force or by any gift, the things of the Church which arise from consecration, Saint Urban says:

C. XII. No one shall convert to his own right by force or by a gift the things which arise from consecration.

Whoever sells or buys ecclesiastical things—which are gifts of God, since they are given by God to the faithful and by the faithful to God, and are received freely from him and therefore ought to be given freely—for the sake of his own gains, thinks with that same Simon that the gift of God is possessed by money.

C. XIII. Bishops who distribute tithes and offerings to laymen, not clerics, are simoniacs.

Likewise Gregory VII. An evil report has reached us that certain bishops confer the tithes and offerings of Christians not upon priests of their own dioceses but rather upon lay persons, namely soldiers or servants, or—what is more grievous—kinsmen. Hence, if from now on any bishop is found to transgress this divine precept, let him be held not the least among the greatest heretics and antichrists; and, as the Nicene Synod decreed concerning simoniacs, both the bishop who gives and the laymen who receive from him, whether for a price or as a benefice, shall be consigned to the fires of eternal burning.

C. XIV. One who grants tithes for money sells the Holy Spirit.

Likewise Paschal II. No one of the faithful is ignorant that to grant an altar and tithes for money and to sell the Holy Spirit is the simoniacal heresy.

C. XV. Let one who has attempted to obtain ecclesiastical benefices through money lack the honor wickedly acquired.

Likewise Pope Innocent [II, in the Roman Synod, c. 2]. If anyone has acquired prebends, a priorship, a deanery, an honor, any ecclesiastical promotion, or any ecclesiastical sacrament—for example, chrism, holy oil, or consecrations of altars or churches—through money, with the execrable ardor of avarice intervening, let him lack the honor wickedly acquired, and let buyer, seller, and intermediary be struck with the mark of infamy. Let nothing be exacted either for a meal or under the appearance of any custom before or afterward, nor let him himself presume to give anything, since it is simoniacal; but let him freely enjoy the dignity and benefice conferred upon him without any diminution. GRATIAN. What the sacred canons determine concerning the second and third questions has been disclosed by the authorities brought forward on each side.

Question IV

GRATIAN. Part I. Now, therefore, the fourth question must be treated: whether his father's crime is imputed to this man, when it is established that it was committed without his knowledge? That ignorance excuses him is proved by the authorities of many. For Augustine says, [epistle XLVIII to Vincentius]:

C. I. Another's crime does not stain one who is ignorant of it.

No one's crime stains one who is ignorant of it.

[C. II.]

Likewise, [in the same epistle]. What place is left for innocence if another's crime stains one who is ignorant of it?

C. III. Concerning infants who are baptized by heretics.

Likewise it is read in the African Council, [c. 14]. It was resolved concerning infants who are baptized by heretics—for they did this by no judgment of their own—that when they have returned to the Church of God with a salutary purpose, the error of their parents should not impede them from being promoted to the ministry of the sacred altar.

C. IV. On the same.

Likewise in the same, [c. 24]. Those who were baptized as little children among the Donatists, when they were not yet capable of knowing the destruction of error, if, after reaching an age capable of reason, they have acknowledged the truth, abhorred the falsehood of those persons, and been received by the Church according to the ancient order through the imposition of the hand, the name of error ought not to impede such persons from receiving the office of the clergy.

C. V. The crimes of kinsmen harm clerics in no respect unless they were conscious of them.

Likewise Leo IV to Ebruinus and Adelfridus. Because the governance of our prelacy—as you well know—ought to be solicitous not only about the welfare of priests but also of secular persons, we therefore wish your fraternity to know that this priest now present has come to the Apostolic See and related to us in order the violence and his excommunication; he likewise indicated that his church had been taken from him without the just course of law, which another priest, having given a gift and led by the zeal of envy, presumed to usurp. His relatives, compelled by great grief on that account, soon seized that priest who held his church and gouged out his eyes. Yet the aforesaid priest says that this was done without his will or counsel. If this is so, as he testified to us with his own mouth, you must take great care that, if he was not canonically excommunicated, a canonical remission be made for him.

[C. VI.]

[See below in Gratian's Dictum after canon 9.]

C. VII. The perfidy of parents ought not to harm their children.

Likewise from the Fourth Council of Toledo, [c. 60]. If baptized Jews afterward have prevaricated against Christ and been condemned with any penalty, it will not be proper to exclude their faithful children from their property, because it is written: "The son will not bear the iniquity of the father."

C. VIII. The sins of parents are not imputed to those who are proved personally separate from them.

Likewise Augustine to Boniface, [epistle XXIII]. Accordingly, when a man has now been made in himself another person distinct from the one who begot him, he is not held liable for another's sin without his own consent. Therefore, he drew guilt because he was one with and in him from whom he drew it when that which he contracted was committed. But one does not draw it from another when each is now living his own proper life, whence it is said: "The soul which has sinned, that one shall die." But that he may be regenerated through the office of another's will, when he is offered for consecration, the one Spirit from whom the person offered is regenerated accomplishes this. Hence Gregory also in book XXVI of the *Moralia*, [c. 8, on c. 35 of Job]:

C. IX. Another's impiety harms the one who imitates it.

"Your impiety will harm the man who is like you, and your justice will help the son of man." Human impiety harms the one whom it pollutes by perverting him, and in turn our justice helps the one whom it changes from depraved actions. For those things which cannot either corrupt a good person or change an evil person do not know how to harm or help. GRATIAN. To the contrary, the Lord says to Moses: "I am a jealous God, who visits the sins of fathers upon the children to the third and fourth generation," although Augustine asserts that this was said not from inequality of judgment but from the greatness of clemency, speaking thus: "In the law the Lord threatens that he will render the sins of fathers to their children in the third and fourth generation, not from inequality of judgment, so that some sin and others are punished, but from the greatness of clemency, since he always awaits repentance and does not correct and amend what is committed in the first generation before the third and fourth generation has arrived." In the Digest, title *On Penalties*, [c. VI]: "The crime or penalty of a

father can inflict no stain upon a son. For each person is subjected to lot from his own offense, nor is he constituted the successor of another's crime. The divine brothers also so rescripted to the people of Hierapolis." Therefore, since Innocent writes concerning those baptized by heretics, "It is the law of the Church to furnish only lay communion through the imposition of the hand to those who were baptized by heretics, and not to substitute any of them into even the slightest clerical honor," it is apparent that ignorance alone excuses infants who were baptized by heretics, so that, according to that decree of the African Council, the name of error does not impede them from receiving the clerical office. Likewise, as Augustine writes to Bishop Auxilius, [epistle 75]:

[C. X.]

"The sins of parents which are committed by the parents after their children's birth are not imputed to the children; nor are children to be struck with a spiritual penalty for the sins of their parents." [GRATIAN.] But to be deprived of an office or benefice of the Church is a spiritual penalty; therefore, the son does not merit this from the sin of his father. Likewise, if one who is ordained unknowingly by a simoniac is excused, as is read above in Urban's chapter, this man also is to be excused who is ordained simoniacally through ignorance. Part II. But that saying of Gregory is objected:

C. XI. Concerning a church which is consecrated by a bargain.

A church which has been consecrated by a bargain ought to be called execrated rather than consecrated.

GRATIAN. Likewise, through the sin of the citizens the treasures of Jericho are read to have been anathematized. Hence Achan, who stole a golden rule and certain other precious things, is said to have taken from what was under anathema. § 1. Likewise, through the sin of the Amalekites their animals were commanded to be killed; because Saul spared them, he heard from Samuel: "Do you not know that to resist is the sin of divination, and to refuse to obey is like the crime of idolatry?" § 2. Likewise, through the sin of the Egyptians their possessions were given over to hail, and their beasts and firstborn were consumed by death. § 3. Likewise, through the sin of the Israelites the ark of the Lord was handed over to the Philistines. Therefore, if things which lack sense—such as a church, altar, the ark of the Lord, and the stones of Jericho—are either execrated, handed over to sinners, anathematized, or devastated by hail; if things which lack the power of understanding—such as the animals of the Egyptians and Amalekites—are destroyed by death for the sins of men: it is apparent that ignorance of a crime excuses no one, especially when an advantage from it is brought to the ignorant person. For example, if someone gathered riches for his ignorant son from robbery and rapine, ignorance would not excuse the son from being compelled after his father's death to return the things wickedly acquired. § 4. Likewise, through the sin of Achan the Israelite people were delivered into the hands of their enemies. § 5. Likewise, through the sin of Eli's sons the people fell into the hand of the Philistines. § 6. Through the sin of the people their elect were also often impeded, and finally the prophets were led captive with them. Part III. § 7. The reply to these things is as follows. Insensible and irrational things are either execrated, anathematized, or destroyed by death through the sin of men, not by participation in the sin, but for the sake of a mystery, in detestation of the sin, or as a scourge of the delinquents. For the sake of a mystery, as the treasures of Jericho and the animals of the Amalekites. For Jericho is interpreted "moon" and signifies this world. "Amalekites" is interpreted "those licking blood," and they signify the covetous, the avaricious, and

demons. “Israelites” is interpreted “men seeing God,” and they signify the multitude of the saints. Therefore, the stones and treasures of Jericho are anathematized and the animals of the Amalekites are commanded to be killed in order to test the covetousness for the treasure of this world, which is designated by the stones and treasures of Jericho; and the irrational motions of the vices, which are understood through the animals of the Amalekites, ought not to pass into the lot of the saints. But the animals of the Egyptians, their possessions, and their firstborn were consumed by hail and death, so that they might be punished in those things in whose prosperity they rejoiced and so that it might be given to be understood that the world and its substance will perish. But the land of the Israelites also was turned to salt, rains were adverse to their crops, and their animals were consumed by sterility and disease, so that at least amid punishments they might perceive their author, whom they refused to recognize through benefits. In detestation of sin, however, Simon's money was condemned, to whom it was said: “May your money be with you unto perdition, because you thought the gift of God to be possessed by money.” In detestation of the same crime, also, an altar and a church which are consecrated through simony are said not so much to be consecrated as execrated, because one who pours out the oil of consecration through the intervention of money is to be believed not to consecrate but to execrate. Hence it is that blessed Gregory commanded churches consecrated by Arians to be consecrated again, because those who lacked faith could not bestow the sanctification of consecration, which is perfected only in faith in the Trinity. But the ark and the prophets were handed over to enemies through the sin of their fellow citizens. The elect also who were impeded by their murmuring suffered these things not as a penalty for crime, but as a trial and example of patience. § 8. Likewise, the people who were delivered into the hands of their enemies through the sin of Achan and the sons of Eli signify that subjects are corporally scourged so that amid those very scourges the sins of the prelates may be struck, just as Achan, discovered by lot, was overwhelmed with stones. § 9. So also Jonah's little ship is endangered so that the fugitive, discovered by lot, might be immersed in the waves. Sometimes the life of subjects is depraved through the merits of prelates, so that subjects who favor their prelates unto evil fall together with them, just as the children of Israel, long bearing the sins of the priests, finally fell with them into the hands of enemies. Likewise, David numbered the people, through which sin the sword of the Lord raged against the people. “But the glory of the king is in a broad nation; in the diminution of the people is the crushing of the prince.” He who therefore grew proud in the multitude of his nation was rightly punished in its diminution. § 10. Likewise, ignorance did not excuse the little children of the Sodomites from being consumed by heavenly fire for their fathers' crime; but through this fire the penalty was diminished for those from whom succession to their fathers' crime was taken away. At the same time, it was also demonstrated that little children are sometimes corporally scourged for the sins of their parents. The same must be understood concerning the little children who, through the sin of Dathan and Abiron, descended alive into hell. § 11. Likewise, when Ham sinned his son Canaan was cursed; when Gehazi transgressed, leprosy was transmitted to his descendants. When the Jews cried out, “His blood be upon us and upon our children,” their remnant was bound over to the penalty of the death of Christ. When Ahab sinned, his descendants also lost the throne of the kingdom; and those born of his seed in the kingdom of Judah were excluded from the Lord's genealogy until the stain of that family was purged. The hatred of Esau also, as Malachi testifies, passed to the Edomites. From all these things it is gathered that ignorance of sin excuses no one. § 12. But by these examples none are proved to be held by the sin of others except imitators of their

wickedness. For whoever of the seed of Esau and of the others were converted to God and detested their fathers' wickedness experienced not hatred but God's clemency. Likewise, as Ambrose says, [sermon XI]:

[C. XII.]

"Peter's little ship, in which Judas was, is disturbed, because he who was firm through his own merits was disturbed by those of another." [GRATIAN.] But Peter was ignorant of Judas's sin. Therefore, ignorance did not excuse him; yet this disturbance is understood not as pollution by sin but as bodily persecution, because through the demerits of evil persons the good are sometimes so oppressed that their infirmity is troubled. Accordingly, by these authorities those for whom money was given while they were ignorant are not proved to be simoniacs. Therefore, this man cannot be proved guilty of a crime of which he had no consciousness. Part IV. § 1. It must also be noted that not every ignorance excuses anyone. For one kind of ignorance is of fact, another of law. Ignorance of fact is of one thing which he was not bound to know, and of another which he was bound to know. Concerning what he was not bound to know, as the Apostle says: "If any unbeliever has invited you to dinner, eat whatever has been set before you, asking nothing. If anyone says to you, 'This has been sacrificed to idols,' do not eat." Behold, the one invited to dinner was not bound to know that the meats set before him had been sacrificed to idols. Concerning what he was bound to know, such is the ignorance of the Jews and the rest of the unbelievers, who are still ignorant that the things foretold by the prophets concerning Christ have been fulfilled, whence he is still awaited by the Jews as one who will come. This excuses no one. § 2. Likewise, one ignorance of law concerns natural law, another civil law. Ignorance of natural law is damnable in all adults; but some are permitted to be ignorant of civil law, others not. Ignorance of civil law harms no one in avoiding loss if a transaction has arisen from it; thus, if a minor has given money to a son under paternal power, he recovers it, but in an adult it is regarded as a delict. § 3. Likewise, if you, even as an adult, divide with another an inheritance offered to you without a judge, thinking the testament supported by law when it was not, you will obtain the whole inheritance; or if you pay or promise, as though under a written acknowledgment of debt, that which you owed under no law, or did not owe under natural law but did under civil law, you recover it; not so if it concerns a delict. For if one thinks that the law permits him to seize his own thing, he falls under the constitution *If Anyone into Such*.

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C. XIII. Emperor Valentinian Augustus.

If anyone has advanced into such audacity of fury that he violently invades possession of things lodged with the fisc or with any persons before the outcome of a judicial determination, then, if he was constituted owner, let him restore to the possessor the possession which he took away and lose ownership of that thing. But if he invaded possession of things belonging to another, let him not only return it to the possessors but also be compelled to restore the value of those same things.] GRATIAN. In this case, however, there was no ignorance of law but of fact, and of a fact which he was not bound to know. Therefore, ignorance of his father's offense excuses him from guilt for the crime, which, even if he had been bound to know it, he nevertheless could not discover because of the infirmity of his age.

Question V

GRATIAN. Part I. What is asked in the fifth place—whether it is lawful for him to be in the church or to exercise the order which he obtained by his father's money—is determined by the authority of Urban, who, writing concerning simoniacs, says among other things, [in the Council of Piacenza, c. 5 and those following, and likewise in the Roman Council]:

C. I. Concerning little children who buy churches through their parents' covetousness.

Whoever, through their parents' covetousness, obtained churches or parts of churches through money while they were still little children, after they have wholly relinquished them, if they wish to live canonically in them, we concede out of mercy that they may remain there; nor do we remove them from sacred orders because of this deed, if they are otherwise found worthy. § 1. But those who, when they were of adult age, bought them by themselves, led by abominable covetousness, if they wish to live canonically in other churches, we permit out of great mercy that they minister there, their proper orders being preserved. But if perhaps they cannot be transferred to others and promise to live canonically in them, let them be content with minor orders and not approach sacred orders, the authority of the Apostolic See nevertheless being preserved in all things. § 2. Yet if any were catholicly ordained before the purchase, when they have relinquished the things they bought and have conducted a canonical life, let them be permitted in their own grades, unless perhaps the church is of such a kind that they ought to obtain the first place there. For we do not permit them to have the first, sole, or provost's place in churches they bought. Part II. GRATIAN. That he said this not to the prejudice of the canons but from a dispensation of mercy is gathered from an epistle of the same man sent to the priest Vitalis in these words:

C. II. Mercy can be shown to simoniacs by preserving their dignity if their life commends them.

Those who bought a church, if the person was of such a kind that his life commends him—namely, that he lives under a rule in a monastery or among canons—we concede, mercifully condescending, that he may minister in the office of his honor, yet without prejudice to the sacred canons. Part III. GRATIAN. From this authority, therefore, it is gathered that ignorance excuses such persons from guilt for the crime, as was said above, but not from the fruit of the purchase, since it is conceded that they may remain in the churches which they obtained by their parents' money only after they have wholly relinquished them and only out of mercy. From this it is apparent that, although the sin of simony was committed without their knowledge, they nevertheless cannot carry off the fruit of their father's purchase. But that they are excused from the crime is apparent from this: they are not removed from sacred orders because of this deed. For if they were participants in that crime, they could not ascend to sacred orders. The same must be understood concerning one who obtained the dignity of the priesthood through money given not to the bishop but to one of his chief men, while both the ordainer and the ordained were ignorant of this. Urban II writes to Albert, Bishop of Metz:

C. III. Concerning a certain man for whom the negligence of his parents gave money not to the bishop but to one of his chief men.

You indicated that the bearer of the present letter, through money given by the negligence of his parents not to the bishop but to one of his chief men, obtained the dignity of the priesthood against his will. Although the holy canons testify that he is to be deposed, nevertheless, because he committed this fault unknowingly and under compulsion, and because he voluntarily entreated that he be deposed from that order, applying the bowels of mercy from consideration of discretion—which is the mother of all virtues—rather than from the rigor of the canons, we counsel your fraternity that he may remain in that order; yet in such a way that, if the church which he served does not suffer a scarcity of priests, he shall remain suspended from the priestly office. But if perhaps the utility of the church requires that he assume the care of governance, let it be lawful for him, by concession of his bishop and obedience to the brethren, to exercise the priestly office.

Question VI

GRATIAN. What ought to be done concerning those who were unknowingly ordained by simoniacs—which was asked in the sixth place—is to be sought above, namely in Urban's chapter which begins: "If any were ordained by simoniacs but not simoniacally." But now the question concerns those who offer money not for ordination but for election, and who lavish rewards upon some persons so that either a decree of election may be made, or it may be confirmed by subscription, or the election may not be opposed: whether their election is to be judged vicious. For those who lavish gifts not for consecration but for election do not seem to buy the gift of the Holy Spirit, since election makes no one a participant in any spiritual grace. But just as buyers of ecclesiastical things are judged simoniacs because those things are so joined to ecclesiastical offices that the one does not come to anyone without the other, so, because one comes to consecration through election, he who lavishes rewards for election is held to be a simoniac just as if he had given gifts for consecration. Hence Symmachus writes to Bishop Caesarius, [epistle I, c. 5]:

C. I. No one shall secure subscription to the election of a bishop by fear, rewards, or the support of powerful persons.

But if anyone desires the episcopate, after money has been given let him by no means employ powerful persons as supporters for himself; nor, by applying fear of any kind, let him compel clerics or citizens to subscribe in order to make a decree for him, or urge them by any rewards.

C. II. One who lavishes rewards in order to be elected is a simoniac.

Likewise Gregory to those dwelling at Salona, [book V, epistle 26]. But, providing for your charity and fearing the judgment of almighty God upon my soul, I desire that the cases of that same Maximus be examined carefully: whether he is oppressed by no crimes which are contrary to sacred order; whether he does not endeavor to reach the priestly office through the simoniacal heresy, that is, by furnishing rewards to certain persons who elect him. For then he will be a free intercessor before the Lord for you, if he comes to the place of intercession not bound by his own offenses.

C. III. Just as ordination, so election or consent ought to be offered without venality.

Likewise Gregory to Syagrius, Bishop of Autun, [and other bishops, book VII, epistle 110]. Just as one who refuses when invited and flees when sought is to be moved toward the sacred altars, so one who aspires of his own accord or thrusts himself forward importunately is without doubt to be repelled. For one who thus strives to ascend to higher things—what else does he do but diminish by growing and, by ascending outwardly, descend inwardly into the depths? And so, dearest brother, let sincerity flourish in the ordaining of priests; let the consent be simple and without venality; let a pure election be put forward, so that one promoted to the summit of the priesthood may be believed to be there not by the support of persons bought but by God's judgment. GRATIAN. But if money has been promised or paid while the elected or ordained person was wholly ignorant, and he did not come to election or ordination by that means, it appears to harm him in no respect: it pertains neither to guilt for a crime of which he had no consciousness nor to the annulment of an election or ordination which he is shown otherwise to have attained not through their depraved covetousness.

Question VII

GRATIAN. Part I. Now the seventh question must be treated: whether one renouncing his heresy is to be received in the episcopal dignity or not? Cyprian writes thus concerning these persons to Stephen, [book II, epistle 1]:

C. I. In what orders those returning from heresy are to be received.

If any priests and deacons were first ordained in the catholic Church and afterward proved perfidious and rebellious against the Church, or among heretics were promoted by pseudo-bishops and antichrists with a profane ordination contrary to Christ's disposition, and attempted outside to offer false and sacrilegious sacrifices against the altar and the divine word, it is fitting that these also, when they return, be received on this condition: that they communicate as laymen and hold it sufficient that they are admitted to peace, they who had proved enemies of peace; nor ought they, when returning, to retain among us those weapons of ordination and honor with which they rebelled against us.

C. II. Concerning those who perform ordination for gifts, and those returning from heresy who are received in their own orders.

Likewise from the Seventh Synod. If anyone violates any ecclesiastical tradition, written or unwritten, let him be anathema. § 1. Let every bishop, priest, or deacon convicted of having given or received ordination for gifts fall from the priesthood. § 2. But some say: "Because we do penance for sin and God forgives it"—and so I too say that God receives every penance and through penance forgives sins which have already been done. For I know that God received David, an adulterer and murderer, through penance and said concerning him: "I have found a man according to my heart." I know, in turn, that the same man heard from God: "You will not build a house for me, because you are a man of blood." I know that Manasseh had his impiety forgiven through confession. I know that prostitutes and tax collectors were received through penance; yet none of those who sinned before baptism was numbered among the priests. I know that some, while they were in the world, remained in much fornication, but after becoming monks shone forth like lights of the world; yet none ascended to the

priesthood. Even if this has rarely happened, it was nevertheless no law of the Church. We know Mary, the first woman sinner; after her conversion, although holy and chaste, she was nevertheless not numbered among the deaconesses. But why do I say this? Following the holy Apostles and venerable Fathers, with all confidence I cry out that whoever was ordained through simony—whether bishop, priest, or deacon—is alien to the priesthood, for the grace of the Holy Spirit is not saleable; the tradition of Caiaphas and invention of Simon are alien to the holy priesthood. § 3. And if anyone who has fallen into fornication after baptism is not received into the priesthood—for the canons prohibit this—then, if anyone has been promoted to the priesthood with this sin and afterward becomes known, let him be degraded. Likewise: § 4. Concerning the one who was ordained through money, I confess that God receives him through penance. He is good toward all, and his bowels are open to every penitent person. But because, according to the Apostle, a bishop must be irreproachable, whoever has either ordained someone or been ordained through money shall be alien to every priesthood. § 5. Patriarch Tarasius said: Whoever, through money, ordain or have ordained, or are ordained or have been ordained as bishops, priests, deacons, or any persons of the priestly number, let them be altogether repelled from the priesthood, just as Simon Magus was by Peter. Whoever through money have obtained the administration or care of monasteries, churches, religious houses, hospitals, homes for the elderly, or orphanages, let them be expelled from that administration and care with deposition. One who, having fallen into fornication after baptism, was ordained, if he afterward has confessed, let him cease from ministry; but if he has been convicted by someone, let him be deposed altogether. § 6. A bishop, priest, or deacon who strikes someone, by himself or through another, as though wishing thereby to be feared, let him be deposed. Likewise: § 7. One who has been ordained or has obtained a church through secular powers, let him be deposed; but if he has obtained a religious house, let him be expelled.

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C. III. On the same.

Likewise from the Council of Meaux, c. 43. It must be guarded against and resisted with the greatest zeal, and, through the power of Christ's blood, interdicted to bishops and kings, to all higher powers, and to all supporters, electors, consenters, or ordainers of any persons whatsoever into an ecclesiastical grade, that no one obtain a place of governance through the simoniacal heresy by any faction, cunning, promise, advantage, or gift, either by himself or through a person put forward.]

C. IV. Which persons returning from the heretics can be received and which cannot.

Likewise from the same Synod, [the Seventh, action 1]. Part II. When they had assembled at Nicaea in Bithynia, and Peter the archbishop and Peter the priest and abbot of the monastery of Saint Sabas, holding the place of Pope Hadrian, and Tarasius, Archbishop of Constantinople, and John and Thomas, apocrisaries of the eastern apostolic sees, and the other bishops were sitting together, the bishops of Sicily said: It is fitting that we inquire concerning future matters. § 1. Likewise Basil, Bishop of Ancyra, said: The ecclesiastical constitution has things canonically handed down from antiquity by the holy Apostles and their successors, our holy Fathers and teachers, the six holy universal synods, and the orthodox local synods: that those returning from any heresy to the orthodox faith and tradition of the catholic Church ought in writing to deny their heresy and confess

the catholic faith. § 2. Likewise Patriarch Tarasius said: Does it seem good to you that those returning from heresy should receive their sees? § 3. The most religious monks said: Just as the six universal synods received those returning from heresy, so also do we receive them. § 4. The holy Synod said: It pleases all of us. And Basil, Bishop of Ancyra, Theodore, Bishop of the city of Myra, and Theodosius were commanded to sit in their own grades and sees. § 5. Likewise Constantine, Bishop of Cyprus, said: It is not proper that we who are bishops should need instruction, but that we should be teachers of others. § 6. Likewise Bishop Tarasius said: The teaching of evil teachers is evil. The Church does not receive priests from evil teachers. § 7. Likewise John, apocrisary of the eastern sees, said: Heresy separates every man from the Church. § 8. Likewise Bishop Tarasius said: Behold, many canonical, synodal, and patristic books have been read and have taught us to receive those returning from heresy, if there is no other cause in them. § 9. Likewise Peter, apocrisary of the Pope, said: Macarius the heretic was exiled at Rome by the holy Sixth Synod, and our father Pope Benedict gave him an interval of forty days, and daily sent his counselor Boniface to him and instructed him with admonitory words from divine Scripture; and he was by no means willing to be corrected. But he did this so that he might receive him in his own order. § 10. Likewise Patriarch Tarasius said: What do you say concerning Anatolius? Was he not also made chief in the Fourth Synod? And behold, he was ordained by the impious Dioscorus. Therefore, let us also receive those who were ordained by heretics, just as Anatolius was received. § 11. Likewise: It truly is the voice of God that sons do not die for their fathers, but each one dies in his own sin; and that ordination is from God. § 12. Likewise Patriarch Tarasius said: We have heard the paternal commands. What, therefore? Ought we to receive those ordained by heretics? § 13. The holy Synod said: We have heard, lord, and we ought to receive them. § 14. Patriarch Tarasius said: Many of those who assembled at the Sixth Synod were ordained by Sergius, Pyrrhus, Peter, and Paul, who were chiefs of the heresy of the Monothelites, because these men sat successively in the See of Constantinople; and from the last of them, namely Peter, to the Sixth Synod there were no more than twelve years. But Thomas, John, and Constantine were made archbishops by those heretics, and nevertheless they were not rejected for this reason. § 15. The holy Synod said: This is manifest. § 16. Constantine, Bishop of Cyprus, said: It has been sufficiently shown that those coming from heretics are to be received. But if anyone goes voluntarily to a heretic and receives ordination, let him not be received. § 17. Likewise Patriarch Tarasius said: And I reject those who for a cause of this kind were ordained for the overthrow of the faith, especially when orthodox bishops were present by whom they could have been ordained. Such is the paternal understanding. But if there has been synodal concord and unity of the churches among the orthodox, whoever presumes to be ordained by unclean heretics shall be subject to deposition. The holy Synod said: This is a just judgment. Part III. GRATIAN. From this authority it is given to be understood that one who has passed from the unity of the catholic faith into the fellowship of heretics in order to receive from their hands the sacraments of ecclesiastical dignity, or one who, scorning the orthodox, has desired to be ordained by heretics, even if afterward, renouncing his heresy, he has returned to the Church, nevertheless will not be able to exercise the office received. By Cyprian's authority, however, those who, having been ordained within the catholic Church, fall away in order to attack the faith are prohibited from ecclesiastical administration. But simoniacs are neither ordained by heretics for the overthrow of the faith nor, having been ordained within the catholic Church, armed against the faith. For although they ordain some through money, they nevertheless do not attack the faith or preach that the grace of the Holy Spirit is saleable. Hence, when they have detested their heresy by true

penance, they are not prohibited by the preceding authorities from being received in their own grades. Nevertheless, by that chapter of the Nicene Synod, "If anyone through money, etc.," by that other chapter of the Seventh Synod, "If anyone every tradition, etc.," and by the authorities of Innocent and many others, they are commanded to be irreparably condemned. Hence Leo IV also to the Bishops of Britain:

C. V. Simoniacs cannot do penance in an order wickedly received.

You inquire concerning those who do not fear to sell doves in the Lord's temple for most base gain and, by wicked temerity, join their own deeds to the heresy of Simon: whether they can do penance in their order or only outside the order and priestly grade? We certainly cannot aid by any penance those who are convicted and those who are known to have perpetrated so detestable a crime—which has already been condemned by many councils—and oppose so many spiritual fathers; but let it be certain to all that I concur in the sentence of those Fathers. Part IV. GRATIAN. Unless the rigor of discipline is sometimes relaxed through a dispensation of mercy. For the crimes of many are damnable, which nevertheless the Church tolerates on account of the time, on account of the person, in view of piety, necessity, or utility, and because of the outcome of the matter. On account of the time: as Gelasius, when because of the necessity of the time he saw the Italian Church, through the incursion of war and famine, deprived of the office of nearly all clerics, so that the means of governing souls were lacking for very many peoples, conceded that clerics might be taken from monks or laymen, speaking thus, [to the Bishops throughout Lucania, epistle I, c. 1]:

C. VI. The decrees of the Apostolic See are tempered because of the necessity of the times.

We are constrained by the necessary disposition of affairs and induced by the moderation of the Apostolic See so to weigh the decrees of the paternal canons that, with diligent consideration, we may temper them—as far as can be done—in those things which the necessity of the present times demands be relaxed for restoring the churches. GRATIAN. Likewise: "By ancient [canons], therefore, etc." Seek this above in the treatise on those to be ordained. Likewise Pope Innocent, when because of the necessity of the time, lest there be too great a scandal in the Church, he received those ordained by the heretic Bonosus, says in his decrees, [epistle XXII to the Bishops of Macedonia, c. 5]:

C. VII. When the necessity ceases, that which pressed ought to cease.

That which was established for a remedy and because of the necessity of the time is established not to have existed originally. Therefore, when the necessity ceases, that which necessity devised as a remedy ought likewise to cease, because the legitimate order is one thing, and that which usurpation compels to be done for the present time is another.

GRATIAN. Similarly, by dispensation it was established in the Council of Nicaea, [c. 8], concerning the Novatians that those returning to the Church should be ordained:

C. VIII. Let those who have returned to the Church from the Novatians be ordained again.

If any of the Novatians wish to come to the catholic Church, it pleased the holy Council that they be ordained and thus remain in the clergy. But before all things it is proper that this confession be

exacted from them in writing: that they profess that they will observe, by common consent, the statutes of the catholic Church.

C. IX. The oath of those returning from schism.

Whenever the eye of the heart, covered by a cloud of error, is made serene by the light of heavenly illumination, one must strive with great caution lest the author of schism secretly rush in and again cut off with the weapon of error, from the root of unity, those who have returned to it. And therefore, after I, N., bishop of the city of N., discovered the snare of division by which I was held, considered the matter within myself in prolonged deliberation, and, with ready and spontaneous will, returned under the guidance of divine grace to the unity of the Apostolic See—and so that I may not be thought to have returned with a mind not pure but feigned—I pledge, under penalty of the loss of my order and the obligation of anathema, and promise to you, N., and through you to Saint Peter, prince of the Apostles, and to his vicar, the most blessed N., or his successors, that I will never, through the persuasion of any persons or by any other means, return to the schism from which I was rescued by the liberating grace of our Redeemer, but that I will always remain in every respect in the unity of the holy catholic Church and the communion of the Roman Pontiff. Hence I say under oath, by almighty God, these four holy Gospels which I hold in my hands, and the welfare of N., our lords governing the commonwealth, that I will remain always and without doubt in the unity, as I have said, of the Church to which by God's favor I have returned, and in the communion of the Roman Pontiff. But if —which may it not happen—I separate myself from this unity by any excuse or argument, let me, incurring the guilt of perjury, be found bound to eternal punishment, and let me have a portion in the future age with the author of schism. Moreover, I dictated that this document of my confession and promise be written by N., my notary, with the consent of the priests, deacons, and clerics who, binding themselves with me in this unity, likewise followed with ready will in all the things written above and subscribed with their own hands; and, subscribing it with my own hand, I delivered it to you. Enacted in the place N., on that day, and under the consuls written above. Subscription of the bishop. I, bishop of the city of N., having furnished an oath to preserve all the things written above, have subscribed this my confession and promise. GRATIAN. But to the contrary, from the rigor of the canons Pope Felix [III] writes to all Bishops, [epistle I, c. 5]:

C. X. Those who have been baptized or rebaptized outside the Church are not to be admitted to ecclesiastical service.

Those who at any age have been baptized or rebaptized anywhere other than in the catholic Church shall by no means be permitted to approach ecclesiastical service. It ought to suffice for them that they have been received into the number of catholics. For whoever violates this statute, or does not remove one whom he has learned to have crept from their assembly into clerical ministry, will appear to pronounce judgment upon his own order and communion. GRATIAN. On account of the person: as blessed Gregory, writing to Bishop Januarius, [book VII, indiction 2, epistle I], says:

C. XI. The rigor of the canons is sometimes relaxed on account of the person.

So great a wickedness concerning your old age has reached my ears that, unless we still weighed it in a humane manner, we would already strike it with a fixed curse. § 1. And indeed a sentence of punishment ought to have been hurled against you; but because we know your simplicity together

with your old age, for the present we remain silent. GRATIAN. In view of piety: as Gelasius says concerning the illiterate and those defective in body, [to the Bishops throughout Lucania, epistle I, c. 18]:

C. XII. The decrees of the canons are sometimes relaxed in view of piety.

If any such persons have been received either through their own rashness or through the negligence of those presiding, let them receive nothing further by way of promotion, and let them hold it sufficient that this was conceded to them out of excessive compassion. GRATIAN. In view of necessity: as Pope Hilary, when grave scandal arose on both sides concerning a certain bishop ordained without the metropolitan's knowledge, says in his epistle, [to Ascanius and all the Bishops of the Province of Tarragona]:

C. XIII. Certain things are tolerated in the Church for the sake of necessity.

Because we see that whatever has been indicated by either party is confused by every perversity, after considering the necessity of the times we have decreed that what was done pertains to pardon on this condition: that henceforth no bishop be ordained without the knowledge or consent of the metropolitan.

C. XIV. On the same.

Likewise Innocent, [to the Bishops of Macedonia, epistle XXII, c. 6]. Whenever a people or a crowd sins, because punishment cannot be inflicted upon all on account of their multitude, it is customarily allowed to pass unpunished. I therefore say that the former things are to be left to God's judgment, and that henceforth they are to be guarded against with the greatest solicitude.

C. XV. Through dispensation certain things are tolerated which the rigor of the canons condemns.

Likewise from the epistle of Cyril sent to Maximus, Deacon of Antioch. I learned from the monk Paul, beloved by me, that your piety refuses to this day to embrace the communion of the most reverend Bishop John, because certain persons in the church of Antioch either still hold evil opinions with Nestorius or indeed once held them but perhaps have come to their senses. Therefore, let your moderation test whether at any time, openly and irreverently gathering together with Nestorius, they hold his opinions and converse together; although they once had a cauterized conscience, let them now be gathered together after penance has been done concerning the things into which they were drawn, even though perhaps they are ashamed to confess the transgression. § 1. But so that we may not be thought to love contention, let us embrace the communion of the most reverend Bishop John, showing indulgence to him; and for the sake of dispensation, let him recognize that his affair is not being treated more searchingly, strictly, or vehemently against him. For, as I have said, the affair greatly needs the grace of dispensation.

C. XVI. On the same.

The same to the priest and archimandrite Januarius. Dispensations in affairs sometimes compel certain persons to go a little outside what is owed in order to make some greater gain. For just as those who sail the sea, distressed when a storm presses and the ship is endangered, unload certain

things so that the rest may remain safe, so also we, when we do not have complete certainty of preserving all affairs, disregard certain of them lest we suffer the loss of all. GRATIAN. In view of utility: as is related in the Council of Meaux, [c. 64], concerning the sons of virgins abducted by force and thus joined in marriage to their abductors:

C. XVII. Certain things are tolerated in the Church in view of utility.

Those begotten from such a marriage are not to be admitted to ecclesiastical orders unless perhaps either the greatest utility or necessity of the Church demands them, or an evident prerogative of merits commends them. GRATIAN. Peter, agreeing with this, says: "In truth I have discovered that God is not a respecter of persons, etc." § 1. Certain things are also tolerated in the Church because of the outcome of the matter, as Leo says in his decrees concerning laymen suddenly ordained bishops contrary to the decrees of the canons, [epistle LXXXV, otherwise LXXXVII, c. 1, to the Bishops of Africa]:

C. XVIII. The office received is left out of mercy to laymen who are promoted to the episcopate contrary to the decrees of the canons.

The cases demand that fitting punishment be brought forth not only against such prelates but also against those who ordained them. But the mildness of mercy surrounds us on one side and the censure of justice on the other, so that we believe certain offenses are to be tolerated in some manner, but others entirely cut away. We therefore permit those whose promotion incurs only this ground for reproach—that they were elected from the laity to episcopal office—to retain their place, without prejudicing the statutes of the Apostolic See or dissolving the rules of the blessed Fathers, because remission of a sin does not give license to sin, nor will it be lawful afterward to commit with impunity what could be conceded for some reason, lest we punish with just vengeance afterward what we have conceded for a time with pious lenity.

C. XIX. Donatists and Novatians, although blamefully ordained, are nevertheless tolerated from necessity.

The same to the Moorish bishops. Maximus also, although blamefully ordained from the laity, if he is now no Donatist and is alien to the spirit of schismatic depravity, we do not repel from the episcopal dignity which he obtained in whatever manner, on condition that he make manifest that he is catholic by a declaration directed to us.

C. XX. On the same.

The same, [in the same, at the beginning of c. 3]. We wish Donatus of Seia, converted—as we have learned—from Novatianism with his people, to preside over the Lord's flock in such a way that he remembers to direct to us a declaration of his faith, in which he both condemns the error of the doctrine of Novatian and most fully confesses the catholic truth. But the things which we have now remitted after a certain consideration of the cases are henceforth to be guarded by the ancient rules, lest we punish with just vengeance afterward what we have conceded for a time with pious lenity.

C. XXI. Those returning from heresy can, after public profession, be received in their own orders.

The same to Januarius, Bishop of Aquileia, [epistle III]. For it is most salutary and fullest of the utility of spiritual medicine that priests, deacons, subdeacons, or clerics of any order who wish to be seen as corrected and strive to return again to the catholic faith which they formerly lost should first profess without ambiguity that they have condemned their errors and the very authors of the error, so that, their depraved opinions also having been extinguished, no occasion for despair may remain and no member can be violated by fellowship with such persons, when their own profession has begun to stand against them in all respects. Concerning them we also command that this constitution of the canons be observed: let them hold it as a great benefice if, every hope of promotion having been taken from them, they remain with perpetual stability in the order in which they are found, provided that they have not been stained by repeated anointing.

C. XXII. Those returning from heresy are publicly to detest the heresy and its authors.

Likewise from the Council of Pope Martin, [c. 36]. If any bishop, or a priest or deacon of any bishop, has fallen into the opinion of some heresy and for this cause has been excommunicated, let no bishop receive him into communion unless first, in a common council, he satisfies all by presenting a declaration of his faith and thus obtains his free purgation. Let this same thing also be decreed concerning faithful laymen if they have been named as holding the opinion of any heresy. Part V. GRATIAN. Behold the causes for which certain things are tolerated in the Church, which, when those causes cease, are punished with pious severity. But Pope Gelasius distinguishes when they are to be tolerated and when cut away, saying, [to the Bishops throughout Lucania, epistle I, c. 11]:

C. XXIII. When certain things are to be tolerated in the Church.

Even if those things are sometimes to be permitted which, if the integrity of the others is established, cannot alone do harm, those things nevertheless must be guarded against greatly which cannot be received without manifest discoloration. And if regard for circumstances or times compels, or consideration of accelerated provision excuses, those very things which are sometimes believed to be indulgently allowed without any detriment, how much more are those things in no way to be mutilated which neither any necessity nor any ecclesiastical utility at all extorts? For sometimes canonical precepts are curtailed and relaxed on account of necessity or the utility of the Church. Part VI. GRATIAN. § 1. We have briefly shown which persons returning from heresy can be received in their own orders and which cannot. But now the question concerns those who were ordained by heretics: if they return from heresy to the unity of the catholic mother Church, whether they can be ordained again in the same order? “For one once consecrated,” as blessed Gregory says, “ought not to be consecrated again.” § 2. Likewise, sacraments which are ministered by heretics in the form of the Church—as Augustine testifies—ought not to be reiterated, lest the injury appear to be done not to the man but to the sacrament. § 3. But that saying of Gregory is understood concerning those who received priestly or episcopal consecration; when they return to the Church, they either receive the effect of their anointing through the imposition of hands or are commanded to cease perpetually from its administration. Similarly, that saying of Augustine is understood concerning the same mystical anointing and the sacrament of baptism. § 4. But there are other orders in the Church which are conferred without sacramental anointing, by the blessing of the bishop alone, with a certain

distribution of vessels or vestments, such as the Levites and the others constituted below them. Although these are ordained by heretics, nevertheless, when returning to the Church, let them be ordained by the Church in the same order—if they are otherwise worthy—nor will there be in them a reiteration of the office, since it is taught that nothing was conferred upon them by the heretics. Hence Urban II writes to Peter, Bishop of Pistoia, and Rusticus, Abbot of Vallombrosa:

C. XXIV. Those returning from heretics are to be ordained anew.

We found from his own confession that Daibert was ordained deacon by Negzelon, although the latter was a simoniac, but not simoniacally; and it is established as declared by the judgment of blessed Pope Innocent that Negzelon, a heretic (who, it is established, was ordained by heretics), because he had nothing to give, could give nothing to him upon whom he laid his hand. We therefore, supported by the authority of so great a pontiff and strengthened by the testimony of Pope Damasus, who says, "What was badly done ought to be repeated," have constituted Daibert deacon wholly anew—since he has departed from the heretics in body and spirit and labors according to his strength for the benefit of the Church, and since the Church's necessity presses. We judge that this is not to be considered a repetition, but only the complete conferral of the diaconate, since indeed, as we have said above, one who had nothing could give nothing.

C. XXV. Concerning the same.

Likewise Pope Damasus, [letter IV, *On Chorepiscopi*]. Through the illicit imposition of a hand, those who seemed to have received something had a wounded head; and where a wound has been inflicted, it is necessary to apply medicine by which the inflicted blemish may be healed—that is, it is necessary to repeat what is not proved to have been legitimately done or conferred. For how one who received honor from a man who did not have the power to give it legitimately can retain that honor, I cannot discover.

[C. XXVI.] Book 9 of the Code, under the title *On the Julian Law concerning Extortion*.

The Emperors Theodosius and Valentinian, [Augusti, to Florentinus]. Part VII. We decree that men of such a kind shall approach the governing of provinces as are accustomed to be advanced to the insignia of office, not by ambition or a price, but by their proven life and the testimony of Your Magnificence; provided, certainly, that those to whom these offices have been entrusted through the choice of your See or ours declare under oath in the proceedings that, for obtaining administrations, they neither gave anything nor would ever thereafter give anything, whether through themselves or through an intermediary acting in fraud of the law and of the oath, or under the title of gift or sale, or under any other covering of whatever contract; and that on this account—excepting salaries—they would accept absolutely nothing, whether while placed in an administration or after laying down the office, for any benefit furnished during the time of an administration which they obtained gratuitously. And although we judge that no one, through contempt of his oath, would be so forgetful of divine fear as to place any advantage before his own salvation, nevertheless, so that he may be subjected to fear for his salvation by the necessity of peril, if anyone should dare to neglect the oaths furnished, we grant to everyone, as in the case of a public crime, the capacity to accuse not only the recipient but also the giver, with the one who is convicted to be struck in every way by the penalty of fourfold restitution.

[PALEA.

C. XXVII. Concerning the same.

Likewise Pope Paschal. It is evident that simoniacs, as the first and principal heretics, are to be rejected by all the faithful and, if after admonition they do not come to their senses, are to be oppressed by external powers. For all crimes, in comparison with the simoniacal heresy, are reckoned as almost nothing.] GRATIAN. With these matters briefly set forth, let us come to those things which the Church is prepared to avenge by the severity of discipline, showing by what accusers or witnesses any persons are to be convicted; by what judge each person ought to be condemned or absolved; if a case has been vitiated, by what remedy it may be relieved; and, if the accusers fail, whether the defendant is to be compelled to purgation. And so that what we are about to say may appear more easily, let an example be placed before our eyes, in which the authorities contending on either side may be distinguished, and what the authority of the holy Fathers holds may be clearly made known.

Causa II

GRATIAN. A certain bishop is assailed by a layman concerning a fall of the flesh; two monks, one subdeacon, and two Levites bear testimony against him; he perceives himself to be burdened by his metropolitan; in the very ventilation of the case, three of the witnesses fail, whether deceived by a promise or rejected by canonical examination; nevertheless the bishop is despoiled, because his crime was notorious. (Question I.) Here it is asked first whether judicial order is required in manifest matters. (Question II.) Second, whether one who has been despoiled is to be judged by anyone. (Question III.) Third, with what penalty those who have failed in accusation or testimony are to be struck. (Question IV.) Fourth, whether he is to be condemned by the testimony of two. (Question V.) Fifth, whether, when the accusers fail, he is to be compelled to purgation. (Question VI.) Sixth, whether a remedy is to be given to one who, for the sake of delay in the case, has put forward the plea of appeal. (Question VII.) Seventh, whether laymen, monks, or any persons of the lower orders are to be heard in the accusation of their superiors. (Question VIII.) Eighth, how an accusation ought to be made: whether in writing or without writing.

Question I

GRATIAN. Part I. That no one can be condemned without judicial order is proved by many authorities. For concerning this Augustine says, [homily L, *On the Usefulness of Penance*]:

C. I. One cannot be condemned unless either convicted or voluntarily confessed.

We cannot pronounce sentence against anyone unless he has either been convicted or voluntarily confessed.

C. II. Concerning the same.

Likewise Emperor Constantine. A judge examining a criminal shall not pronounce sentence before either the defendant himself confesses or he is convicted through irreproachable witnesses.

GRATIAN. Augustine testifies to this same thing, and in the same words:

C. III. Concerning the same.

Likewise Gregory, [book VIII, letter 50]. Just as we do not wish anyone to be condemned without a judgment, so we do not permit things justly determined to be delayed by any excuse.

C. IV. Concerning the same.

Likewise Bishop Eleutherius, [to the bishops of Gaul]. Let nothing be done against anyone accused without a lawful and suitable accuser. For our Lord Jesus Christ also knew Judas to be a thief; but because he was not accused, he was therefore not cast out.

C. V. Concerning the same.

Likewise Pope Felix, [letter I to Bishop Paternus]. Primates examining an accused bishop shall not pronounce a sentence of condemnation before either he himself confesses that he is guilty or he is convicted through irreproachable witnesses examined canonically and according to rule. Otherwise we judge the condemnation of bishops to be void and unjust, and therefore to be reconsidered by a synod, so that those oppressed may be aided by all in all cases. GRATIAN. Pope Zephyrinus decrees the same:

C. VI. Many are to be sustained through tolerance, although they have been condemned by the sentence of divine judgment.

Likewise Augustine. “One of you is about to betray me.” He said well, “of you,” and not, “of us.” For he is of you, from whom he has not been excluded through judicial authority after confession or conviction. But from me, who need no proofs and know all things most certainly, he has been separated and divided. It is as if he said: Although through the sentence of hidden judgment I hold him condemned, nevertheless you are still to sustain him through tolerance.

C. VII. Let no judgment be maintained unless it was conducted reasonably.

Likewise Gregory to John the Defender, going to Spain, [book XI, letter 50]. First, inquiry must be made concerning the person of the priest of our most beloved brother and fellow bishop Januarius; and if the truth stands as that bishop's petition contains, let that priest be recalled in every way to his church and place. But if it should be said that some case was brought or proved against him, with him present and giving an account for himself, both the kind of case and the manner of proof must be investigated carefully, so that from this you may be able to gather whether he should still remain in exile or instead be recalled to his church and office.

§ 1. Concerning the bishop's person this is to be done: if no criminal case worthy of exile or deposition was brought or proved against him, that bishop who, while he was surviving, perversely and contrary to the canons presumed to be ordained in his church shall, deprived of the priesthood, be expelled from every ecclesiastical ministry. He shall also be handed over to that same most beloved Januarius, our brother and fellow bishop, so that either he may be held in custody by him or certainly be sent by him to us. The bishops who ordained him, or who were present consenting to his ordination, shall be deprived of communion in the Lord's body for six months and decreed to do penance in a monastery; and the aforesaid Januarius shall be restored in every way to his place and

order. But if the danger of death should happen to threaten those deprived of communion, the blessing of viaticum shall not be denied them. If, however, the bishops should confess of their own accord that, to the prejudice of the condemnation or deposition of the remembered bishop, they consented through fear of the judge and did such things, the time is to be shortened for them and the manner of penance moderated. But if perhaps the man who invaded his place has departed from this life and another has been ordained, because he appears to be of lighter guilt, as having succeeded not that living man but a dead man, the office of the episcopate shall be forbidden him only in that church, so that, if elected, he may be bishop in another church which becomes vacant of a bishop, though he shall never return in any way to the church of Málaga.

§ 2. Moreover, the glorious count shall be condemned to restore to the aforesaid bishop whatever the bishop affirms by an oath that he expended or suffered as loss through the count's violence and persecution. But if perhaps it is reported that the matter was done otherwise than the aforesaid bishop's petition contains, it must be investigated carefully, and, once the truth is known, what the order of justice counsels must be judged with fear of God.

§ 3. Therefore, because Bishop Stephen asserts that certain things were fabricated out of hatred for him, that he was accused on false charges, that nothing was done in an orderly manner, and that he was condemned unjustly, inquiry must first be made diligently whether the judgment was conducted in an orderly manner; whether some persons were accusers and others witnesses; then into the quality of the charges, whether it was worthy of exile or deposition; whether testimony was spoken against him under oath and in his presence; whether the proceedings were in writing; and whether he himself had permission to answer and defend himself. Inquiry must also be made carefully into the persons accusing and testifying: of what status or reputation they are; whether they are needy; whether perhaps they had any enmities against the aforesaid pastor; whether they gave testimony from hearsay or testified that they knew specifically; whether judgment was given in writing; and whether the sentence was read with the parties present. But if perhaps these things were not done solemnly, nor was a case worthy of exile or deposition proved, let him be recalled in every way to his church. Those who condemned him contrary to the fear of God and the statutes of the canons are, after excommunication, to be sent to a monastery to do penance for six months, provided certainly that, if the danger of death should happen to threaten any of them, the blessing of viaticum shall not be denied him. The man who rashly sought his place while he was living shall, deprived of the priesthood, be expelled from every ecclesiastical ministry and handed over to that same most beloved brother and fellow bishop of ours, so that he may either send him to us or hold him in custody with himself. The bishops who presumed to ordain him or gave consent to his perverse ordination shall, deprived of communion, be assigned to a monastery to do penance for six months, etc., as above in the case of Bishop Januarius and below.

§ 4. But if perhaps some of the things alleged against the remembered Bishop Stephen have been proved, while others could not be demonstrated, it must be weighed with altogether cautious consideration whether the lighter charges or instead the graver ones have been proved, so that from them you may know how you ought to form your determination.

§ 5. But the glorious count, if the aforesaid bishop is shown to be innocent, shall restore to him without any delay whatever he took from his property or from that of his church, etc., as above in the case of Bishop Januarius. But if the bishop has such a fault, etc., and below in the first case of the

monks. Concerning the person of the priest, etc., and below in the case: A cleric against a cleric. And below, [in the same letter 54 of the eleventh book].

§ 6. Concerning the person of Bishop Januarius, it must be known that it was done altogether gravely and contrary to the laws that he was violently dragged from the church; for if a bishop should suffer any injury from anyone in a church, the law strikes the person doing the injury with capital punishment and, as one guilty of *maiestas*, gives everyone permission to accuse him, as the sequence of this law speaks in book I of the Code, chapter III, constitution 11:

§ 7. "If anyone should rush into this kind of sacrilege, so that by breaking into a catholic church he inflicts any injury upon the priests and ministers, or upon the worship or place itself, etc." And below:

§ 8. Concerning the person of Bishop Stephen, this is to be attended to: he ought neither to have been dragged to judgment against his will nor to have been judged by the bishops of another council.

§ 9. If it should be said against this that he had neither a metropolitan nor a patriarch, it must be said that this case ought to have been heard and settled by the Apostolic See—which is the head of all churches—just as the aforesaid bishop is known to have petitioned. Therefore, because the bishop had as judges men of another council who were altogether suspect, let the sentence spoken by one who was not his judge possess no firmness.

§ 10. As to what is said, that he was accused by his own servants, it must be known that they ought not in any way to have been heard.

§ 11. But if he is said to have been accused of the crime of *maiestas*, not even concerning that ought they to have been believed, if his life or reputation was not of such a kind beforehand.

§ 12. As to what that same bishop says, that in his absence certain witnesses of the vilest kind were produced: if this is true, it is of no weight.

§ 13. Many laws show what kind of witnesses, or witnesses of what reputation, are to be admitted to testimony; these are unknown to scarcely anyone, and they also decree that witnesses of the vilest kind ought not to be believed without bodily examination.

§ 14. As to what is said, that nothing was judged in writing, one must read under title XLIV of book VII of the Code, the final constitution, that judgment ought to have been given in writing. For there, among other things, it is commanded that a sentence which was spoken without writing should not deserve even to have the name of a sentence.

[PALEA.

C. VIII. A final sentence ought to be delivered from a writing.

Likewise book VII of the Code, under the title *On Sentences to Be Recited from a Written Summary*: the Emperors Valentinian, Valens, and Gratian, Augusti. We ordered by general statutes that all judges to whom we have permitted the capacity to render law in the provinces, once the cases have been heard, shall pronounce their final determinations by recitation from a writing. To this decree we add that a sentence which was spoken when it had not been written should not deserve even to have the name of a sentence, and that the solemnity of an appeal should not be required for the rescission of things wrongly decreed.]

[PALEA. Likewise, from the Council at Saint-Médard, Hincmar, Archbishop of Reims, said:

C. IX. Concerning the same.

The custom and authority of ecclesiastical laws is such that in cases involving formal proceedings they always require a writing, to such a degree that one who approaches the sacred font is commanded to give his name. One who is advanced to the highest priesthood is elected by a decree confirmed by the hands of all. Once ordained, he is commanded to receive letters from those who ordained him. One who is also severed from ecclesiastical fellowship by any transgression is either received or cast out by the inscription of a written document. But one who is accused, excommunicated, or reconciled is also commanded to be accused or reconciled through a writing. And thus in the other things of this kind, a writing is required to such a degree that, as blessed Gregory writes in his memorandum to John the Defender, taking from the Roman laws: "A sentence which is pronounced without a writing should not deserve even to have the name of a sentence."]

C. X. One who, it is established, was cast out neither after confession nor conviction is to be restored.

Likewise Pope Nicholas to Airard, Archbishop of Tours. Let it be known to your fraternal charity that this poor priest, named Christopher, has tearfully complained to our clemency concerning his distress, saying that he was assailed by false crimes and, neither convicted nor confessed, was unreasonably cast out from his church. For, as he reports, after your diligence made inquiry three times, no guilt could be found in him, either concerning the crime of fornication or concerning consent to homicide, except that, on account of his poverty, he either was unwilling to agree to the things demanded or was unable to fulfill them. Yet his voluntary rival did this, who unjustly seized his church beforehand. Therefore we greatly admonish Your Reverence that the things which, perhaps without your knowledge, appear to have been done from Gehazi-like cupidity be corrected by the censure of Your Fraternity with speedy amendment: namely, by restoring the already-mentioned priest to his own church and, through your piety, returning to him the former honor which he lost; and you shall by no means permit canonical institutes to be contemned by anyone's rashness, because an equal penalty binds the one who does and the one who consents.

C. XI. Before a case is proved, no one ought to be excommunicated.

Likewise from the Book of Constitutions. Let no bishop, no priest, excommunicate anyone before the cause for which the ecclesiastical canons command this to be done has been proved. But if anyone should excommunicate another contrary to this, let the one who was excommunicated return to the grace of holy communion by the authority of a higher priest; but let the one who excommunicated unlawfully abstain for as much time as shall seem good to the authority of the higher priest, so that he may justly suffer himself what he did unjustly.

C. XII. Uncertain and doubtful things cannot be judged.

Likewise Augustine, in letter [CXXXVII] to the clergy and the whole people of Hippo. For this reason I have not dared either to suppress or erase the name of the priest from the number of his colleagues, lest I seem to do an injury to divine power, under whose examination the case still hangs, if I wished to anticipate his judgment by my judgment. Not even judges in secular affairs do this when a doubt is referred to a higher power: that, while the report is pending, they should dare to change anything. It

has also been established in a council of bishops that no cleric who has not yet been convicted ought to be suspended from communion, unless he has not presented himself for the examination of his case.

C. XIII. Let no one be condemned either by the judgment of suspicion or before a true and just judgment.

Likewise Pope Melchiades, [to the bishops of Spain]. First, always investigate all things diligently, so that you may determine them with justice and charity. Condemn no one before a just and true judgment. Judge no one by the judgment of suspicion; but first prove, and afterward pronounce a charitable sentence; and what you do not wish to be done to you, do not do to another.

C. XIV. Who are prohibited from accusing, and who are received.

From book XLVIII of the Digest, under the title *On Accusations and Formal Charges*, [law *Who May Accuse*]. Some are prohibited from accusing on account of sex or age, such as a woman and a ward. Others on account of an oath, such as those who earn military pay. Others on account of the magistracy and power in which, while serving, they cannot be summoned to court with impunity. Others on account of their own offense, such as infamous persons. Others on account of base gain, such as those who have signed two prosecutions against two defendants, or who have accepted money for accusing or not accusing. Others on account of their status, such as freedmen against patrons. Others on account of suspicion of calumny, such as those who, having been suborned, gave false testimony. Some on account of poverty, such as those who possess less than fifty gold pieces. Nevertheless, none of all these are excluded from accusation if they pursue their own injury or defend the death of their relatives. Freeborn persons and freedmen are not to be prohibited, for the sake of defending their own property, from complaining of an act of their parents or patrons, as, for example, if they say that they were driven by force from a possession by them—certainly not so that they may prosecute them for the crime of violence, but so that they may recover the possession. For a son is likewise not prohibited from complaining of an act of his mother if he says that a child was falsely substituted by her so that he would have an additional coheir; but it is not permitted him to make her a defendant under the Cornelian Law.

§ 1. One person cannot denounce a man who has been denounced by another; but one is not prohibited from denouncing a man who was removed from among the defendants by the intervention of a public or private abolition, or because the accuser desisted.

§ 2. The deified Severus and Antoninus prescribed that a woman denouncing a matter pertaining to the public utility of the grain supply is to be heard by the prefect of the grain supply. Persons of ill fame who make accusations are also admitted without any doubt. Soldiers too are to be admitted to this accusation. Slaves who denounce are also heard. Part II. GRATIAN. By all these authorities it is given to be understood that no one is to be condemned unless, after judgment has been conducted in an orderly manner, he is either convicted or himself confesses that he is guilty. But these things are to be understood of those whose crimes are hidden; manifest crimes, by contrast, do not require judicial order. Hence Ambrose:

C. XV. Manifest things are judged without an accusation.

Manifest things do not need an accusation.

C. XVI. Concerning the same.

Likewise Pope Nicholas to King Charles, [in the letter which begins *Syllabarum*]. The things which King Lothair, your nephew, has done do not need an accusation. For his works are manifest. GRATIAN. In manifest matters the defendant is not oppressed by the craftiness of accusers, nor is the crime concealed by his own tergiversation, since his guilt of its own accord forces itself upon the eyes of all. And therefore judicial order is not required in such matters; it was instituted only so that neither innocence would lie open to the snares of adversaries nor the guilt of the offender escape the sentence of a just examination. Hence Pope Stephen [V] to Leo, Bishop of Teano:

C. XVII. A manifest case does not desire judicial order.

In a case manifest and known to many, witnesses are not to be sought, as Saint Ambrose says in the letter to the Corinthians, expounding the Apostle's judgment concerning fornication: "It is not," I say, "for a judge to condemn without an accuser, because the Lord did not cast out Judas, although he was a thief, since he was not accused. But once this deed was known, the Apostle judged that the man was to be driven from the assembly of the brotherhood. For all knew his crime and did not bring a charge. He publicly had his stepmother in the place of a wife; in this matter neither was there need of witnesses nor could the crime be covered by any tergiversation." And a little later: "Absent in face, but present by the authority of the Spirit, who is nowhere absent, I have already judged as though present that the one who committed this be handed over to Satan for the destruction of the flesh." Part III. GRATIAN. But it must be known that, of those things which are manifest, some are known to the judge and unknown to others; others are hidden from the judge and manifest to others; while certain things are known to the judge and to others. Things known only to the judge cannot be punished without examination, because, when the person of an accuser is assumed, judicial power is lost. For in one and the same case no one can be at the same time accuser and judge. Hence Augustine, in the homily *On Penance*, [which is L, c. 12]:

C. XVIII. When some are to be corrected, and when tolerated.

Many are corrected, as Peter; many are tolerated, as Judas; many are unknown, "until the Lord comes, who will illuminate the hidden things of darkness." And below: § 1. But we cannot prohibit anyone from communion—although this prohibition is not yet mortal but medicinal—unless he has either confessed voluntarily or been formally named and convicted in some secular or ecclesiastical judgment. For who dares to assume both things for himself, so that he himself is both accuser and judge of someone? It is understood that the Apostle Paul also briefly intimated a rule of this kind in the letter to the Corinthians when, after recalling certain crimes, he gave from certain ones a form for all similar ecclesiastical matters. For he says: "I wrote to you in the letter not to associate with fornicators—not, certainly, the fornicators of this world, or the covetous, or robbers, or servants of idols; otherwise you would have had to go out of this world." For people remaining in this world cannot live except with such persons, nor can they win them for Christ if they avoid their conversation and living together. Hence the Lord also, eating with publicans and sinners, says: "A physician is not necessary for the healthy, but for those who are ill. For I came not to call the just, but sinners." And therefore the Apostle continues and adds: "But now I have written to you not to associate: if any brother is formally named as either a fornicator, or a servant of idols, or covetous, or a reviler, or a drunkard, or rapacious, with such a person not even to take food. For what is it to me to

judge those who are outside? Do you not judge those who are inside? But God will judge those who are outside. Remove the evil from among yourselves." By these words he shows sufficiently that evil persons are to be removed from the communion of the Church not rashly or in just any manner, but through a judgment, so that, if they cannot be removed through a judgment, they should rather be tolerated, lest, by perversely avoiding the evil, the one himself departing from the Church bind to hell those whom he appears to flee. For examples have also been proposed to us for this in the Scriptures: that, as chaff in the harvest, it be endured until the final winnowing fan; or that, within those nets where good fish are with bad, they be tolerated with an even mind until the separation which will occur on the shore, that is, at the end of the age.

§ 2. For that which the Apostle says is not contrary to this passage: "Who are you, who judge another's servant? He stands or falls to his own lord." For he did not wish a man to be judged by a man according to the judgment of suspicion or even by an extraordinary usurped judgment, but rather according to God's law and the order of the Church, whether he confessed of his own accord or was accused and convicted. Otherwise, why did he say, "If any brother is formally named as either a fornicator, or a servant of idols, etc.," unless because he wishes that naming to be understood which is made against someone when a sentence is pronounced with judicial order and integrity? For if mere naming suffices, many innocent persons are to be condemned, because crimes are often falsely named against someone.

§ 3. Therefore, let those whom we admonish to do penance not seek companions for themselves in punishments, nor rejoice because they find many like themselves. For they will not burn less because they will burn with many.

C. XIX. A sin which is known only to the judge cannot be condemned by him.

The same in the same work. "If your brother has sinned against you, correct him between you and him alone." Why? Because he sinned against you. What does "he sinned against you" mean? You know that he sinned. Because it was secret when he sinned against you, seek secrecy when you correct what he sinned. For if you alone know that he sinned against you and you wish to rebuke him before all, you will not be a corrector but a betrayer. Attend to how the just Joseph spared with so great a kindness so great a disgrace which he had suspected concerning his wife, before he knew from where she had conceived, whom he perceived to be pregnant and knew that he had not approached her. There remained, therefore, a certain suspicion of adultery; and yet, because he himself did not know, what does the Gospel say? "But Joseph, since he was just and did not wish to expose her publicly, wished to dismiss her secretly."

§ 1. Therefore, the very things which are sinned before all are to be corrected before all. The very things which are sinned more secretly are to be corrected more secretly. Distinguish the occasions, and Scripture is in accord. Thus let us act, and thus it must be done, not only when a sin is committed against us, but also when a sin is committed against someone in such a way that it is unknown by another.

§ 2. A bishop has come to know some murderer, and no one else knows him. I wish to correct him publicly, and do you seek to make a formal accusation? By no means do I betray or neglect him: I correct him in secret, I place God's judgment before his eyes, I terrify his bloodstained conscience, I

persuade him to penance. We ought to be endowed with this charity. Hence sometimes people reprehend us because, as it were, we do not reprehend; either they think that we know what we do not know, or they think that we are silent if we know. Perhaps you know what I also know: I do not correct him before you because I wish to cure, not to accuse.

§ 3. There are men who are adulterers in their own homes; they sin in secret; sometimes they are disclosed to us by their wives, most often through jealousy, sometimes seeking their husbands' salvation. We do not disclose them, but rebuke them in secret. Where the evil occurs, there let it die. Yet we do not neglect that wound, showing before all things to the man established in such sin and bearing a wounded conscience that the wound is mortal. Part IV. GRATIAN. But when a crime is known to others and not to the judge, even then it is not to be punished without examination, since a judge ought not to pronounce sentence upon a crime hidden from himself. Hence Pope Evaristus says, [letter II]:

C. XX. Sentence is not to be pronounced precipitately.

Almighty God, in order to restrain us from the pronouncement of a precipitate sentence, although all things are naked and open to his eyes, nevertheless did not wish to judge the evils of Sodom from hearsay before he manifestly knew the things which were being said. Hence he himself says: "I will descend and see whether they have fulfilled in deed the outcry which has come to me, or whether it is not so, that I may know." Almighty God, from whom nothing is hidden but to whom all things are manifest before they occur, deigned to investigate these and many other things by himself—which we have not inserted in the chapter because of their length—not because he did not know them, but so that he might give us an example, lest we be precipitate in examining and judging affairs, and lest anyone presume to believe the evils of his neighbors before proving them. By his example we are admonished never to be precipitate in pronouncing sentence, or rashly and carelessly to judge in any way matters not examined, as the voice of Truth says: "Do not judge, that you may not be judged; for with what judgment you have judged, you will be judged," and the rest. Let evil things heard move no one, nor let anyone ever believe things said indiscriminately without certain proof; but let him first investigate carefully what has been heard, and let no one do anything precipitately. For if God, the knower of all things, although knowing beforehand all the evils of the Sodomites, whose outcry had reached even to heaven, wished neither to believe nor to judge until he himself, carefully investigating them with faithful witnesses, proved in deed what he had heard, we, who are human beings and sinners, to whom the hidden judgments of God are unknown, must guard against these things and judge or condemn no one before true and just proof, as the Apostle Paul manifestly says: "Who are you, who judge another's servant? For he stands or falls to his own lord." Part V. GRATIAN. But when a crime is known to the judge and to others, sometimes the defendant denies the deed, as if someone should deny that he killed the man whom he had killed before the judge's eyes and in the sight of many. Here, because he denies that he is guilty, he cannot be punished without examination. Sometimes the very evidence of the deed bears witness that the man is guilty, when by a public deed he confesses his crime; then, after a second and third correction, he is to be condemned without examination if he has proved incorrigible. Therefore, in this final case that authority of Ambrose and Nicholas is to be understood: "Manifest things do not need an accusation." For that fornicator against whom the apostolic sentence proceeded without examination publicly had his stepmother as a wife before all. Lothair also, concerning whom Nicholas writes, had similarly put

away his wife publicly and brought in another. Hence the same Nicholas writes to the archbishops and bishops established throughout Gaul, Italy, and Germany:

C. XXI. Manifest things are to be punished without an accuser.

The crime which King Lothair committed—if indeed he can truthfully be called a king, who restrains the appetites of the body by no salutary governance, but through slippery enervation yields rather to its illicit impulses—in two women, namely Theutberga and Waldrada, is manifest to all. But nearly the whole world, flowing from all sides to the threshold or Apostolic See, also reported that the bishops Theutgaud and Gunthar had long been his guardians and supporters in such a deed. Therefore, by decree of the holy synod together with us, they exist without doubt as deposed in its presence, excommunicated from priestly office, and removed from the governance of the episcopate.

Question II

GRATIAN. That one who has been despoiled cannot stand before a judge is proved by many authorities. For Pope John says, [letter I to Archbishop Zacharias]:

C. I. Before joinder of issue, all things are to be restored to the possessor.

It was decreed of old that, before joinder of issue, the bishop or primate presiding shall restore to the possessor all possessions, all things taken from him, and all revenues.

C. II. Concerning the same.

Likewise Nicholas, [Pope]. All laws, ecclesiastical as well as common and public, command that all things taken from a person who has been despoiled of his property be restored to him.

C. III. No one ought to be accused while he has been despoiled of his property.

Likewise Pope Stephen, [letter II]. No bishop, while he has been despoiled of his property, ought to be accused before all things which were taken from him by whatever device are restored in accordance with the laws, so that before an accusation is received the primates and synod shall restore completely to the bishop who is under consideration all possessions and all revenues.

C. IV. One who has been despoiled ought neither to be summoned to a synod nor to be judged in any matter.

Likewise Eusebius to the brothers established throughout Alexandria and Egypt, [letter II]. In your writings we have found that certain bishops in your regions have been accused by their own sheep—some, to be sure, from suspicion and others upon certain ground—and that for this reason some have been despoiled of their property while others have been driven from their own see. Know that they can neither be summoned to a provincial synod nor to a general one, nor judged in any matter, before all things which were taken from them are restored to their power according to the laws.

C. V. Concerning the same.

Likewise Pope Julius, [in the letter to the Easterners, cc. 35 and 8]. No one can be summoned or judged before all things taken from him and all his rights are restored to him in full, because one who has already been stripped has no privilege of which he can be stripped.

C. VI. Concerning the same.

Likewise Zephyrinus, [Pope to the bishops of Egypt, letter II]. It is therefore commanded in the ancient statutes that those cast out and despoiled of their property shall recover their own churches, and first all their property shall be returned to them; and then, if anyone wishes to accuse them justly, he shall do so under equal peril. They decree that the judges shall be bishops thinking rightly and assembling in the church where the witnesses of each person who seemed oppressed were, and that the defendants shall not answer before all their property has been restored most fully, according to the laws, to them and their churches.

Question III

GRATIAN. Part I. With what penalty those who fail in an accusation are to be struck is determined by the censure of the canons. For they shall receive the penalty of the crime charged, together with loss of reputation. Hence Pope Gaius:

C. I. Concerning those who allege things that are not to be proved.

If anyone should bring against persons of this kind allegations not to be proved, let him understand by the authority of this decree that he sustains the loss of infamy, so that by damage to his honor and loss of reputation he may learn that, at least thereafter, he is not permitted to lie in wait for another's honor with impunity.

C. II. If an accuser fails in an accusation, let him receive retaliation.

Likewise Pope Damasus, [to Archbishop Stephen, letter III]. If a calumniator fails in his accusation, let him receive retaliation.

C. III. Concerning the same.

Likewise from a decree of Pope Hadrian, [in the capitularies collected by him, c. 52, in the middle]. One who has not proved what he alleged shall suffer the penalty which he himself sought to inflict.

C. IV. Concerning those who assail someone with false crimes.

Likewise. If anyone should assail a bishop, priest, or deacon with false crimes and has not been able to prove them, we judge that communion is not to be given to him even at the end. Part II. GRATIAN. It is one thing not to complete an accusation and another not to prove a verbal reproach. The former is permitted to no one without abolition; the latter is permitted to all. Hence Pope Fabian, [to Bishop Hilary, letter III]:

C. V. A verbal reproach is not to be held as an accusation.

If anyone in anger should rashly allege a crime against someone, a verbal reproach is not to be held as an accusation; rather, after a period for deliberating has been allowed, let him declare that he will

prove in writing what he said in anger, so that, if perhaps, coming to his senses, he is unwilling to repeat or write the things he said through anger, he may not be held as guilty of the crime. Part III. GRATIAN. But it is one thing not to be able to prove a crime charged, and another to abandon an accusation because of some promise. For pardon is given to one who, deceived by a promise, abandons an accusation; but infamy is imposed upon one who was unable to prove the crime charged. Hence blessed Gregory writes to John, Bishop of Corinth, [book IV, letter 50]:

C. VI. Concerning one who, enticed by a promise, desists from an accusation.

Therefore, although his own guilt gravely confounds Deacon Paul, because, deceived by a promise, he desisted from the accusation of his bishop, nevertheless we forgive him this guilt.

[PALEA. Therefore, everyone who alleges a crime shall write that he will prove it. In truth, a case is always conducted there where an accusation is admitted; and one who has not proved what he alleged shall himself suffer the penalty which he sought to inflict.]

C. VII. Concerning those who abandon an accusation in order to receive ecclesiastical orders.

The same. Euphemius and Thomas, who received sacred orders in return for abandoning the accusation of their bishop, have been deprived of those same orders, and we will that they remain as they were deposed. GRATIAN. From this it is gathered that the infamy of clerics can be abolished by the Roman pontiff, contrary to that statement of Gelasius: "Although we can save souls through penance, nevertheless we cannot abolish infamy," and that statement of Stephen, after he had enumerated the causes from which infamy is imposed: "All these," he says, "we receive to penance under the mark of perpetual infamy." Or, not all those whom the secular laws declare infamous are made infamous by the law of the canons, since Deacon Paul, who desisted from an accusation without obtaining abolition, recovered the dignity of his office by this authority, although the Turpillian senatus consultum declares him infamous. We are compelled to acknowledge the same also concerning a woman who marries within the period of mourning, since marriages today are governed by the law of heaven, not the law of the forum; and by the law of heaven, when her husband is dead, a woman is released from the law of her husband: let her marry whom she wishes.

§ 1. But the same Stephen writes to the contrary, saying: "We call infamous whomever the secular laws declare infamous." But that statement of Gelasius and Stephen, "Although we can save souls," etc., and, "Under the mark of perpetual infamy," etc., is understood of those upon whom infamy is imposed by a civil judge; just as their examination and chastisement, so also their restoration in full, pertains only to the civil judge. Concerning the woman who marries within the period of mourning, however, this is not contrary to what Stephen says, "We call infamous," etc. For since the secular laws do not disdain to follow the sacred canons especially in marriages, they do not seem to declare infamous a woman who marries not illicitly by apostolic and canonical authority. Part IV. § 2. It must also be noted that it is one thing when a person has repented of making a criminal accusation and of making a formal inscription, if he has been absolved by an innocent defendant; another, if he accepted money from a guilty person in order to desist from proving what he had alleged. Hence in the Book of Capitularies, [c. 175, it is read]:

C. VIII. Concerning one who repents of making a criminal accusation.

If someone has repented of making a criminal accusation and of making a formal inscription concerning something which he was unable to prove, if he has come to an agreement with the innocent accused person, let them absolve one another. But if the judge has recognized that the accused person is criminal, and an agreement concerning collusion has been reached by subreption between the defendant and the accuser, let him receive the penalty established by the laws. Part V. GRATIAN. It must also be noted that, as is read in the Digest, book XLVIII, under the title *On the Abolition of Crimes*, [law I]: "The rashness of accusers is disclosed in three ways. For they either calumniate, prevaricate, or tergiversate. To calumniate is to press false crimes; to prevaricate is to conceal true crimes; to tergiversate is to desist altogether from an accusation.

§ 1. But certainly one who does not prove what he presses is not immediately seen to calumniate. For inquiry into that matter is committed to the judgment of the cognizant official, who, after the defendant has been absolved, begins to inquire into the accuser's intention: with what mind he was led to proceed to accusation. And if indeed he finds his error just, he absolves him; but if he detects him in evident calumny, he imposes upon him the lawful penalty. Either of these is manifested by the very words of the pronouncement. For if he has pronounced thus, 'You have not proved it,' he has spared him; but if he has pronounced, 'You have calumniated,' he has condemned him. And although he has added nothing concerning the penalty, nevertheless the force of the law will be exercised against him. For the question of fact is indeed in the judgment of the one adjudicating; but pursuit of the penalty is not entrusted to his will, but reserved to the authority of the law." But if, in an interlocutory ruling, he said, "Titius appears to have accused rashly," he did not pronounce him a calumniator. For rashness contains pardon for facility, and unconsidered heat lacks the vice of calumny; for this reason no penalty ought to be imposed upon him. Above, book XLVII, under the title *On Prevaricators*, [law 1]:

§ 2. "A prevaricator is, as it were, a straddler, who assists the opposing party after betraying his own case. Labeo says that this name is drawn from variable contention. For one who prevaricates stands on both sides—or rather on the other. But one is properly called a prevaricator who has accused in a public judgment. Otherwise, an advocate is not properly called a prevaricator. What, then, shall be done concerning him? Whether he has prevaricated in a private judgment or a public one—that is, has betrayed the case—he is customarily punished outside the ordinary procedure.

§ 3. It must be known that today an extraordinary penalty is imposed upon those who have prevaricated." And below: § 4. "An accuser convicted of prevarication shall not afterward make an accusation by law." And below: § 5. "In all cases—except a capital case—one who corrupts an informer is held by the senatus consultum as having lost the case." And below, book XLVIII, under the title *On the Abolition of Crimes*: § 6. "We show that person to be a prevaricator who colludes with the defendant, because he concealed his own proofs but admitted false accusations.

§ 7. But if anyone desists from an accusation without abolition, he is punished. Abolition is customarily petitioned and obtained privately from governors; likewise before the tribunal, not informally; nor can the governor delegate this cognizance to another. If the same man brought several crimes against the same man, he ought to seek abolition of each; otherwise, in respect of whatever he has omitted, he will suffer the penalty of the senatus consultum." And below, under the same title: "We understand that person to have desisted who has laid aside his whole intention of proceeding,

not one who delayed the accusation; but one who desisted from accusation with the emperor's permission is unpunished."

§ 8. Abolition, however, remits the penalty; it does not remove infamy. Hence the Emperors Valens, Valentinian, and Gratian are read to have said in book IX of the Code, under the same title *On General Abolition*: "Indulgence, conscript fathers, marks those whom it frees; it does not remove the infamy of the crime, but grants remission of the penalty." But if the prince should say, "I restore you in full," he removes infamy. Hence in the same book, under the title *On Those Who Have Suffered Sentence and Those Restored*, Emperor Antoninus is read to have said to a certain man deported to an island: "I restore you in full to your province," and added: "But so that you may know what it is to restore in full: to your honors, your order, and all other things."

Question V

QUESTION V. *

GRATIAN. Part I. When the accusers fail, the defendant does not appear to be compelled to purgation. For just as, when the claimant fails, a possessor is not compelled to prove the title of his possession, so one who is assailed is not believed to be compelled to purge his innocence. By the authority of Pope Cornelius and of the Council of Tribur, priests are also prohibited from swearing, except for the right faith. For Cornelius says, [letter II to Rufus, an eastern bishop]:

C. I. An oath is not to be exacted from priests.

Up to this time we have by no means known an oath to be exacted from high priests or from the rest except for the right faith, nor have we found that they swore of their own accord.

[C. II.]

Likewise. We, following the laws of the holy apostles and their successors, confirm them and prohibit incautious oaths.

[C. III.]

Likewise. We do not know an oath to have been offered by bishops, nor ought it ever to be done.

C. IV. If any priest has a complaint against a layman, or a layman against a cleric.

Likewise from the Council of Tribur, [c. 21]. If any priest has a dispute arising from a complaint against a layman, or a layman against a priest, at the bishop's command let it be concluded without respect of persons. Let the layman purge himself by oath, if necessary; but in place of an oath let the priest be questioned by the holy consecration, because priests ought not to swear for a light cause. Shall the hand through which the body and blood of Christ is confected be polluted by an oath? Far be it, since the Lord says in the Gospel to his disciples—whose place we unworthy ones bear in holy Church: "Do not swear at all; but let your speech be: yes, yes; no, no. Whatever is more than these is from evil." Part II. GRATIAN. In truth, by these authorities not all oaths are prohibited from being made by priests, but only incautious ones and those which are offered in a judgment for any temporal

cause. But when priests are oppressed by popular infamy, then they ought to offer oaths for the assertion of their innocence. Hence Pope Gregory says, [letter I to Boniface III]:

C. V. A priest accused by the people shall affirm his innocence by an oath.

If a priest, or any sacerdotal person, has been accused by the people and certain witnesses have not been found who speak the truth concerning the crime charged, let him make an oath in the midst and produce as witness to the purity of his innocence him to whom all things are naked and open.

C. VI. Concerning Bishop Leo, whom blessed Gregory caused to furnish purgation.

Likewise from the Register of Gregory, [book II, indiction 10, letter 23], to Emperor Justin, chapter VII. The envy of the ancient enemy has this as its peculiar trait: those whom it cannot cast down into the perpetration of wicked acts because God resists it, it rends their reputations for the present by fabricating falsehoods. Therefore, because a certain sinister rumor had cast aspersions contrary to the priestly purpose upon Leo, our brother and fellow bishop, we caused a strict inquiry to investigate at length whether those things were true, and we found in him no guilt concerning the things which had been said. But lest anything appear to have been omitted which could remain doubtful to our heart, we caused him, in addition, to furnish strict oaths at the most sacred body of blessed Peter. When these had been furnished, we rejoiced with great exultation, because his innocence of this kind shone forth evidently. For this reason, let Your Glory receive the aforesaid man with all charity and show him the reverence which befits a priest; nor let any doubt concerning those matters which have now been purged remain in your hearts. And thus you ought most devotedly to adhere to the above-written bishop in all things, so that you may be seen fittingly and becomingly to honor God in the person of him whose minister he is.

C. VII. That blessed Gregory caused Bishop Menna to be purged by an oath.

Likewise from the same to Brunhild, Queen of the Franks, chapter CCXXXVII. But after we, inquiring into the things which had been said concerning Menna, our most reverend brother and fellow bishop, found him culpable in nothing—and he, moreover, furnishing satisfaction under oath at the most sacred body of blessed Peter the Apostle, showed himself foreign to those things which had been alleged against his reputation—we permitted him to return purged and absolved. For just as it was fitting that, if he existed as guilty in anything, we should punish the guilt in him canonically, so it was not fitting that, with innocence aiding him, we ought to retain him longer or afflict him in any respect.

§ 1. Nevertheless, where the accuser has ceased, we entrust to your judgment that this same man shall furnish before you a purgation concerning himself with two priests joined to him. Finally, the common law, supported by no canonical decree—namely, contact with boiling or cold water or with glowing iron, or any popular invention whatsoever, because these things are altogether fabricated by envy as their maker—we do not wish either him to offer or you to demand in any way; indeed, by apostolic authority we most firmly prohibit it.

C. VIII. Concerning Maximus, Bishop of Salona, that he purge himself by an oath.

The same to Castorius, notary of Ravenna, [book VII, indiction 2, letter 80]. In proportion as you are trusted by us and see necessary causes entrusted to you, so ought you to show yourself energetic and solicitous. Therefore, if Maximus of Salona, after furnishing an oath, has affirmed that he is not held by the simoniacal heresy and, merely questioned concerning the other matters before the body of Saint Apollinaris, has answered that he is innocent, and if he has done penance for his disobedience as we appointed, we will that Your Experience should give him, for his consolation, the letter which we wrote to him, in which we signified that we had returned both our grace and communion to him. For just as it is fitting that we be severe toward those persisting in contumacy, so we ought not to deny a place of pardon to those who are humbled and penitent.

C. IX. Concerning the same.

The same to Marinianus, Bishop of Ravenna, [book VII, letter 79]. You have learned from the letters which we transmitted to you what things are to be done concerning the case of Maximus. But because we have learned more fully what the will of Your Fraternity is concerning this matter from the report of the bearer of these presents, Castorius our chartulary, therefore, if that same Maximus before you and our aforesaid chartulary has purged himself by oath concerning the simoniacal heresy and, merely questioned concerning the other matters before the body of Saint Apollinaris as we wrote, has answered that he is free of them, we commit his case to the judgment of Your Fraternity concerning the penance by which so great a fault ought to be purged: namely, that while excommunicated he presumed to conduct the solemnities of Masses. And therefore securely dispose whatever is pleasing to you according to God, and hold nothing doubtful concerning us. For whatever has been ordained by you concerning this case we both receive with gratitude and willingly admit.

C. X. How Sixtus purged himself.

Likewise Pope Sixtus [III] to all bishops, [c. 1]. You commanded me to write to you how the pressing dispute against me was stirred up, or by whom, so that it might be repelled by your assistance and my case be made firm. Know that I am accused by a certain Bassus and unjustly persecuted. Hearing this, Valentinian Augustus ordered a synod to be assembled by our authority. And when the council had been held, satisfying all with a great examination—although I could sufficiently have escaped otherwise, nevertheless fleeing suspicion—I purged myself before all, namely freeing myself from suspicion and rivalry, but not giving a form for doing this to others who should be unwilling or who should not choose it voluntarily.

C. XI. Concerning the case of the priest Gillandus.

Likewise Alexander II to Rumald, Bishop of Como. We have deliberated in assembly concerning the case of your priest Gillandus, defamed concerning the death of his bishop, your predecessor. Therefore, with the unanimous assent of the brothers standing around us, we report to Your Belovedness that the aforesaid priest Gillandus is to be presented before you, where, if certain accusers should be lacking, then, with justice dictating and without any controversy, the priest shall receive whatever he unjustly lost on this account: both the priesthood and the benefices unimpaired.

C. XII. Concerning the purgation of clerics, if they cannot be convicted.

Likewise from the Council of Agde. If lawful accusers have not been able to prove the crimes of a priest and he has denied them, let him, if he is able, purge himself of the crime with seven associates of his order. But if a deacon has been accused of the same crime, let him clear himself with three.

C. XIII. Concerning the same.

Likewise from the Council of Lleida. If a priest has been defamed by an evil reputation among the people committed to him, and the bishop has not been able to prove it by lawful witnesses, let him be suspended until worthy satisfaction, lest the people of the faithful suffer scandal in him. Worthy satisfaction, however—as it is taught to have been established by the elders—is when, either according to the canons or at the bishop's judgment, he joins seven colleagues to himself and swears upon the holy Gospel placed before him that he did not perpetrate the crime charged against him. And, purged by this satisfaction, let him thereafter securely discharge his office.

[PALEA.

C. XIV. Concerning the same.

Likewise Pope Sylvester. We held it supremely necessary to prohibit in writing the man accused of simony from celebrating the solemnities of Masses until we could learn what was more true.]

[PALEA.

C. XV. Likewise from the Council of Tribur.

If a noble or freeborn man is accused in a synod and has denied it, if it is established that he is a man of faith, let him purge himself with twelve freeborn men. If he was previously detected in theft, perjury, or false testimony, let him not be admitted to an oath, but—like one who is not freeborn—let him purge himself by boiling water or glowing iron.]

C. XVI. Concerning the same.

Likewise Hincmar, Bishop of Reims. If an evil report has gone out concerning a priest and lawful accusers and witnesses are lacking, lest, contrary to the Apostle, the hearts of the weak be struck by the priest's evil report, and lest our ministry be reviled, and lest priests, becoming more secure, slide more licentiously into sin, let him, according to the decrees of the elders, purge his reputation by an oath with neighboring priests nominated for him whom we know to be unwilling to perjure themselves.

[PALEA.

C. XVII. Concerning the same.

Likewise Innocent to the Patriarch of Aquileia and the Bishop of Mantua. We do not believe that it is hidden from your Prudence how often our brother, the Bishop of Trent, has been assailed in our presence concerning simony. When his case had finally been ventilated in our presence, accusers were produced against him, asserting by living voice and in writing that he had given the church of Saint Peter of Pado to the priest Paul for four modii of grain which he had accepted from the laymen of that same church. But because neither accusers nor witnesses were able to proceed in that case

according to the form of the canons and the statutes of the holy Fathers, by the common counsel of our brothers we judge that he ought to purge himself in your presence as the third oath-taker among men of his own order—that is, with two others of his order—and with four abbots and religious priests concerning the aforesaid simony. The form of the purgation, moreover, will be of this kind. That same bishop shall first swear upon the holy Gospels that, for the church of Saint Peter of Pado to be given to the priest Paul, neither did he himself through himself, nor through a subordinate person, nor did another for him with his knowledge, receive a price. Then the purgators shall swear upon the holy Gospels of God that, as they themselves believe, he swore truthfully. We therefore, entrusting the sequence of this case to your Prudence, command you to take care to assemble together in a suitable place and, with the Lord granting it, so to restore the case itself according to the tenor of the present letter that every scruple of this question may thereafter be removed and justice preserved for both parties. But if either of you, with a certain cause hindering him, cannot be present, let those of you who can be present conclude the same judgment. But if our aforesaid brother A. has performed the aforesaid purgation, restore to him by our authority the aforesaid office and the church of Trent. We order him to fulfill this purgation before the next Purification of blessed Mary the Virgin.]

GRATIAN. In the foregoing authorities it is understood implicitly, "if the defendant wishes to purge himself," so that the sacred canons impose upon the accused the manner, not the necessity, of purging, as appears from the end of the chapter of Pope Sixtus and from the authority of Leo, who, after giving a purgation, says concerning himself:

C. XVIII. Concerning Leo, how he purged himself.

It has been heard, dearest brothers, how evil men fabricated grave crimes against me. For this reason I, Leo, pontiff of the holy Roman Church, purify myself in your sight before God and his angels, because I neither perpetrated nor ordered to be perpetrated these criminal and wicked things which they allege against me. But in doing this I do not prescribe a law for others by which they are compelled to do it. GRATIAN. Behold, each supreme pontiff purges himself, yet he does not prescribe to others the necessity of purging. Hence it is given to be understood that the satisfaction of purgation rests in the will of the accused, not in the judgment of the judge. But since in the Council of Lleida a priest is commanded to be suspended until worthy satisfaction, and since also by the decree of Leo it is placed in the bishop's judgment with how many oath-takers a priest ought to purge himself, it is evident that he is to be compelled to purgation and that it rests not in his own will but in the judgment of the judge. Likewise Pope Leo, writing to King Charles, says:

C. XIX. How priests ought to be purged.

We do not doubt that it is known to all of you by sight or hearing that, very often at the persuasion of the ancient enemy, various crimes are alleged against priests. But although, in the time of the lord Pippin of good memory, your father, or in ancient times, it was very often ventilated by the holy Fathers and other men of good devotion how a reasonable examination and satisfaction concerning these matters is to be made by them, nevertheless we have by no means been able to find anything fully concluded on the matter. Indeed, in our times this very matter has very often been ventilated by holy bishops, other priests, and the other ministers of ecclesiastical dignity dwelling in your kingdoms or in others for God, and by us acting together with them, on account of the many and

excessive complaints which have come to us concerning this from various parts. But we wish all you ministers of either order to know how it was determined by the counsel of our lord and father Leo the Apostolic, of the other bishops of the Roman Church and other priests, of the eastern and Greek patriarchs, and of many holy bishops and priests; also by the authority and consent of all our bishops and all the other priests and Levites; and by the counsel of the rest of the faithful and all our counselors.

For it was established by reason and necessity, with the aforesaid authority and the counsel of all, that whenever a crime is imposed upon any priest, if the accuser himself is of such a kind that he ought to be received—because the canons fully express what sort ought to be admitted to the accusation of priests—if, however, as was said, that accuser who is canonically to be received can prove the charge against him in the sight of the bishops with the lawful number of men and of good witnesses, then let him be judged canonically; and if he has been overcome as culpable, let him be condemned canonically. But if the accuser himself cannot prove the charge against him under the above-written condition, let this also be judged canonically. Therefore, if that priest is suspect or not credible to his bishop, to his other fellow priests, or to good and just men from his people or his parish, lest he remain under crime or the aforesaid suspicion, let him—with three, five, or seven good and neighboring priests, after the example of Pope Leo, who had twelve bishops in his purgation, or with more if it should seem good to his bishop or if he should perceive it necessary on account of the tumult of the people, and with other good and just men—after giving an oath before the people upon the four Gospels, return himself purged to the Church. But if anyone desires to know what sort of witnesses ought to be received for the accusation of priests and what is to be done concerning the accuser, it can be found fully in the canons. Part III. GRATIAN. Purgation by the ordeal of glowing iron or boiling water, however, is not to be added to an oath. Hence Stephen V to Liutbert, Bishop of Mainz:

C. XX. The judgment of boiling water and glowing iron is prohibited from being conducted in the Church.

You consulted us concerning infants who, sleeping in one bed with their parents, are found dead: whether the parents ought to purify themselves by glowing iron, boiling water, or any other test from having smothered them. The parents are to be admonished and warned not to place such tender infants with themselves in one bed, lest, through some resulting negligence, they be suffocated or crushed, whence the parents themselves may be found guilty of homicide. For the sacred canons do not judge that a confession is to be extorted from anyone by an examination of glowing iron or boiling water; and what was not decreed by the teaching of the holy Fathers is not to be presumed by a superstitious invention. Offenses made public by voluntary confession or proof of witnesses, with the fear of God held before the eyes, are committed to the ruler to judge. But hidden and unknown things are to be left to him who alone knows the hearts of the sons of men. Those, however, who are proved or confess themselves guilty of such an offense, let your moderation chastise, because if one who destroys by abortion what was conceived in the womb is a homicide, how much more will one who has killed a little child even of a single day be unable to excuse himself from being a homicide? GRATIAN. Whether this pertains to every kind of purgation or only to these two which appear to be prohibited here is not undeservedly doubted, on account of the sacrifice of jealousy and that

statement of Gregory: "If a man who is said to be of a frigid nature can prove by a true judgment that he has never known his wife, let him be separated from her."

[C. XXI.]

For in the book of Numbers it is read that the Lord commanded Moses to speak to the sons of Israel and say to them: "A man whose wife has gone astray and, despising her husband, has slept with another man, and the husband has been unable to discover this, but the adultery is hidden and cannot be charged by witnesses because she was not found in the illicit intercourse: if the spirit of jealousy has stirred up the man against his wife, who either has been polluted or is assailed by false suspicion, he shall bring her to the priest and shall offer as an offering for her the tenth part of a *satum* of barley flour. He shall not pour oil upon it nor put frankincense upon it, because it is a sacrifice of jealousy and an offering investigating adultery. Therefore, the priest shall offer her and station her before the Lord; and he shall take holy water in an earthenware vessel and put into it a little earth from the pavement of the tabernacle. And when the woman stands in the sight of the Lord, he shall uncover her head and place upon her hands the sacrifice of remembrance and the offering of jealousy. But he himself shall hold the most bitter waters upon which he has heaped curses with an imprecation; and he shall adjure her and say: If a foreign man has not slept with you, and if you have not been polluted by abandoning your husband's bed, these bitter waters upon which I have heaped curses shall not hold you. But if you have turned away from your husband, have been polluted, and have lain with another man, you shall be subject to these curses: may the Lord give you as a curse and an example to all among his people; may he cause your thigh to rot and your swelling womb to burst; may the cursed waters enter your belly, and, with your womb swelling, may your thigh rot. And the woman shall answer: Amen, amen.

"And the priest shall write these curses in a book and shall erase them with the bitter waters upon which he has heaped curses, and he shall give them to her to drink. When she has drained them, the priest shall take the sacrifice of jealousy from her hand and shall elevate it before the Lord and place it upon the altar, provided only that he first takes from it a handful of the sacrifice which is offered and burns it upon the altar; and thus he shall give the bitter waters to the woman as a drink. When she has drunk them, if she has been polluted and, having contemned her husband, is guilty of adultery, the waters of cursing shall pass through her; and, with her belly inflated, her thigh shall rot, and the woman shall be as a curse and an example to all the people. But the husband shall be without guilt, and she shall receive her iniquity. But if she has not been polluted, she shall be unharmed and shall bear children." Part IV. [GRATIAN.] But every purgation of this kind appears to be prohibited, since in the foregoing authority of Pope Stephen it is said: "By voluntary confession, etc."

C. XXII. Single combat is not received in the New Testament.

Likewise from a decree of Pope Nicholas. We do not, however, admit single combat in the law, since we do not find that it was commanded. Although we read that certain persons entered upon it—as sacred history relates of holy David and Goliath—nevertheless divine authority has nowhere ordained that it should be held as law, since those who pursue this and things of this kind seem only to put God to the test. GRATIAN. Part V. To the contrary, in the Council of Worms, [c. 15]:

C. XXIII. If thefts occur in a monastery, the monks are to purge themselves by an ordeal.

It often happens that thefts are perpetrated in monasteries of monks. We therefore establish that, when the brothers themselves ought to purge themselves concerning such matters, Mass shall be celebrated by the abbot or by one of the brothers present, and, when the Mass has thus been completed, all shall communicate with these words: "May the Body of the Lord be for you as a proof today."

C. XXIV. Whoever is accused of adultery shall purge himself by a credible ordeal.

Likewise, [in the Council of Salzungen, c. 7]. It was asked what should be done if two persons have been blamed for adultery, and one confesses while the other denies it. It was decreed by the holy council that the one who denied it shall purge himself by a credible ordeal, and the one who confessed shall perform worthy penance.

C. XXV. When several persons are accused of adultery, and one wishes to purge the others, all shall be held guilty if he falls in the ordeal.

Likewise, [in the same council, c. 14]. The holy synod also established that, if two persons have been accused of adultery and both have denied it, and they ask that it be granted them that one of them purge both by a divine ordeal, if the one falls in this, both shall be held guilty.

C. XXVI. Mass shall be celebrated for each charge brought against a person accused of some crime.

Likewise, [in the Council of Worms, c. 10]. If some evil deed has been imputed to a bishop or priest, he ought to celebrate Mass and communicate for each charge, and to show himself innocent of each thing imputed to him. If he has not done this, he shall be held excluded from the thresholds of the church for five years. GRATIAN. But what Sixtus and Leo added at the end of their purgation is to be understood from their example; for by the example of their own satisfaction they did not wish to prescribe for others a law of purgation.

Question IV

GRATIAN. Part I. That which was asked in the fourth place—whether a bishop is to be condemned by the testimony of two persons—is proved by the authority of many. For, as is read in the Gospel of John, Christ says to the Jews: "It is written in your law that the testimony of two men is true." From this he consequently argues against them, saying: "If the testimony of two men is true, why do you not receive my testimony and that of the Father?" Likewise Paul in the Epistle to the Corinthians: "In the mouth of two or three witnesses every word shall stand." Likewise in the Epistle to the Hebrews: "Anyone transgressing the law of Moses, convicted by two or three witnesses, was stoned without mercy."

C. I. By how many witnesses each cleric ought to be convicted.

Likewise from the Second Council of Braga, [c. 8]. It was resolved that, if anyone assails any cleric with the stain of fornication, two or three testimonies shall be required from him according to the

precept of the Apostle Paul. But if he has not been able to prove by testimonies what he said, the accuser shall receive the excommunication of the accused. GRATIAN. Part II. From the foregoing, therefore, it is gathered that a bishop can be convicted and condemned by the testimony of two or three persons. Pope Sylvester, however, sitting in a general synod, said to the contrary:

C. II. By how many witnesses a bishop, a priest, or the other clerics are to be convicted.

A prelate shall not be condemned except with seventy-two witnesses. A cardinal priest, however, shall not be deposed except with sixty-four witnesses; a cardinal deacon of the city of Rome shall not be condemned except with twenty-seven witnesses. A subdeacon, acolyte, exorcist, lector, or doorkeeper shall not be condemned except with seven witnesses. The witnesses and accusers, however, shall be without any infamy.

C. III. Bishops are not to be condemned except under seventy-two witnesses.

Likewise Leo IV, [in a letter to the Bishops of Britain]. We judge that there can never be any condemnation of bishops unless either before the lawful number of bishops—which is constituted by twelve bishops—or certainly after the sentence has been proved by seventy-two suitable witnesses, who are such as are also able to accuse. § 1. And first they shall furnish oaths upon the four sacred Gospels of Christ that they utter nothing false, as blessed Sylvester handed down to us and as the holy Roman Church appears to maintain. And if, among the men whom they have said are to be condemned, there shall be a bishop who has petitioned that his case be heard in the presence of the bishop of the Roman See, no one shall presume to give a final sentence upon him, but we decree that he shall be heard in every respect. GRATIAN. But this is understood either by a special privilege concerning the clerics of the Roman Church, or on account of the shamelessness of certain persons who, although they are not of approved life and knowledge, suddenly leap forward into the accusation of the ministers of God. But those whose life is so praiseworthy that it appears worthy of imitation by all, and concerning whose assertion no doubt can arise: by the testimony of two or three such witnesses anyone can lawfully be convicted and condemned.

Question VI

GRATIAN. Part I. The sixth question follows, in which it is asked: By what remedy may a vitiated case be relieved, and is that remedy to be given to one who has uttered the plea of appeal for the sake of delaying the case? A vitiated case will be able to be relieved by the remedy of appeal. Hence Pope Fabian says, [to Bishop Hilary, letter III, c. 3]:

C. I. Let the remedy of appeal come to the aid of vitiated cases.

Let it be lawful for an appellant to relieve a vitiated case by the remedy of appeal.

[PALEA.

C. II. Concerning the same.

The same author a little above. No affliction or custody of detention ought to injure an appellant.]

C. III. Concerning the same.

Likewise Pope Anacletus, [letter I, at the end]. Let every oppressed person freely appeal to the judgment of the priests, if he wishes, and let him be prohibited by no one, but let him be supported, freed, and heard by them. But if difficult cases or greater matters have arisen, let them be referred to a greater see. And if they cannot easily be discerned or justly terminated there, when the assembly of the highest persons has been gathered—which is accustomed and ought to occur every year—ecclesiastical matters shall be judged in common, justly and in a manner pleasing to God, before the patriarch or primate, and secular matters before the patrician. Likewise Pope Sixtus, [letter II], writes to all rulers of the Church, saying:

C. IV. Whoever has been assailed shall appeal to the Apostolic See.

If any one of you has been assailed in some adversity, let him freely appeal to this holy and Apostolic See and have recourse to it as to the head, lest an innocent person be condemned or his church suffer loss.

C. V. Bishops assailed in graver cases shall appeal to the Apostolic See.

The same to Bishop Gratus, [letter I]. All bishops who are assailed or accused in any graver cases shall, whenever it is necessary, freely appeal to the Apostolic See and flee to it as to a mother.

C. VI. Let an appeal be made to the Roman Church by all.

Likewise Pope Marcellus, [letter I to the Bishops of the province of Antioch]. All bishops who wish, or for whom it shall be necessary, ought to have recourse to the Roman Church as to the head and appeal to it, so that they may receive protection and consecration from it. This ought by no means to be denied to any bishops; rather, without any custody, excommunication, condemnation, or despoiling, let them be permitted to go freely.

C. VII. One who thinks himself burdened by his own metropolitan shall appeal to a greater see.

Likewise Bishop Victor, [to Theophilus of Alexandria, letter I, c. 3]. If anyone thinks himself burdened by his own metropolitan, let him be judged before the patriarch or primate of the diocese, or at the See of the universal Apostolic Church.

C. VIII. Let all appeal to the Roman Church as to a mother.

Likewise Zephyrinus, Archbishop of the city of Rome, [letter I]. An appeal is to be made to the Roman Church by all, but especially by the oppressed, and they are to hasten to it as to a mother, so that they may be nourished at its breasts, defended by its authority, and relieved from their oppressions, because a mother cannot and ought not to forget her son.

C. IX. Whenever someone has appealed, a hearing shall not be denied him.

Likewise Pope Julius, [in the decrees, or in the rescript to the Easterners, c. 22]. It was resolved that, whenever an appeal has been made from any ecclesiastical judges to other ecclesiastical judges, where there is greater authority, a hearing shall not be denied.

C. X. Those unjustly condemned ought to have restoration, and the oppressed aid, from the Roman Church.

The same, [c. 30]. Therefore the aforesaid privileges have been specially granted to this holy See, both concerning the assembling of councils and judgments and the restorations of bishops, and concerning the highest affairs of the churches, so that all the oppressed may receive aid from it, and those unjustly condemned restoration, and such things may neither be presumed by the impious without vengeance nor carried out without their own condemnation. GRATIAN. Part II. Therefore, since Zephyrinus says that an appeal is to be made by all, but especially by the oppressed, and Marcellus writes, "All bishops who wish, or for whom it shall be necessary, ought to appeal," it is evident that the plea of appeal is not to be denied to an accused person, whether he is burdened or not. Certain persons, however, make this distinction: they refer those *wishing* to persons to be consecrated, and those *suffering necessity* to the oppressed, so that the sense is: All who wish to receive consecration from the Roman Church, and are impeded by some persons, ought to appeal to it; all for whom it shall be necessary to flee to it in their oppressions shall likewise utter the plea of appeal, so that the latter may receive protection from it and the former consecration. Likewise that statement of Zephyrinus is distinguished: "An appeal is to be made to the Roman Church by all." It is to be understood of those who wish to receive consecration from it, or who have suffered some injury from their prelates, but especially by the oppressed. According to the first interpretation, the oppressed are understood to be those affected by some injury; but according to the second, those unjustly condemned by a judge are called oppressed. According to this distinction, one who in some matters has uttered the plea of appeal not for relief but for delay does not have authority to appeal. But since Gregory writes to all throughout the several provinces:

C. XI. It is not lawful for anyone except the person to whom an appeal is made to take cognizance of the case of an appeal.

Requesting your charity, we command by our decree that, if any one of his rivals—which we do not wish—should damnably attempt to accuse Aldric, bishop of the church of Le Mans, it shall be lawful for him, after a hearing before the primates of the diocese, if necessary, to appeal to us, and by our authority to conduct and conclude his actions according to the decrees of the Fathers, either before us or before our legates sent from our side; and let no one judge him or presume to judge him before these things. But if something grave and intolerable—which God forbid—has been alleged against him, our censure must be awaited, so that nothing may be decreed beforehand concerning one who has fled to the bosom of the holy Roman Church and implores its aid, until it has been commanded by the authority of that Church, which so imparted its functions to other churches that they were called to a share of solicitude, not to the fullness of power. § 1. But if, as we do not suppose, something contrary to this has been presumed by anyone, let him, removed from clerical office, be judged by all to be guilty before apostolic authority, lest wolves who have entered under the appearance of sheep dare with bestial savagery to tear anyone to pieces and presume to inflict upon others what they do not wish done to themselves. Likewise, since Pope Vigilius says, [in the letter to Eleutherius, final chapter]:

C. XII. The judgments of appellants are to be heard by those to whom appeal is made.

One who knows that he has been placed over others shall not bear it badly that someone has been placed over him. For the Church itself which is first so entrusted its functions to the other churches to be dispensed that they were called to a share of solicitude, not to the fullness of power. Hence it is clear that the judgments of all bishops appealing to the Apostolic See, and all the greater business of cases, have been reserved to that holy See—especially since, in all these matters, the counsel of that See must always be awaited; and if any priest has attempted to obstruct its path, let him know that he will render an account before that holy See not without peril to his honor. GRATIAN. Likewise, since Bishop Nicholas inveighs against the Archbishop of Reims, who dared to condemn Bishop Rothard when he was appealing to the Apostolic See, saying thus:

C. XIII. Concerning the Archbishop of Reims, who dared to judge a person appealing to the Roman See.

Your shrewd wisdom—would that it had been kindled by a good fire received—took up the subject matter for a judgment of deposition against Rothard, removed him from the journey to the Apostolic See, condemned him while he was continuously appealing to the Apostolic See, and committed him to prison custody. And below: § 1. Nevertheless, you ought by no means to have consigned to oblivion the privileges of the Apostolic See, by which the venerable canons command that the judgments of the whole Church be brought to it. And below: § 2. Know that we have carried out these things concerning Rothard for this reason: so that the privileges of the Apostolic See, which appeared to have been badly violated by you, might at last, by apostolic authority and the canonical deliberation of the Fathers, be adorned with their former character and proper honor.

C. XIV. Let each person show to his superiors the obedience he desires from his inferiors.

Likewise Pope Leo, [to Anastasius, Bishop of Thessalonica, letter LXXII, otherwise LXXIV]. One who knows that he has been placed over certain persons shall not bear it badly that someone has been placed over him; rather, let him himself also render the obedience which he exacts, and just as he does not wish to bear the burden of a heavy load, so let him not dare to impose an unbearable weight upon another. For we are disciples of the humble and gentle Master, who says: "Learn from me, for I am gentle and humble of heart." GRATIAN. It is evident, therefore, that a period of delay is to be denied to no appellant. But if he has appealed for the sake of frustrating delay, he will be condemned by the judge to whom the appeal was made. The time for an appeal is either before sentence is given or after it is given. For whenever a person perceives that he is being excessively burdened, he can freely appeal. Hence Pope Sixtus says, [II, letter 1 to Bishop Gratus]:

C. XV. One who is burdened by his own metropolitan shall appeal to the see of the primate or of the universal Church.

If anyone thinks himself burdened by his own metropolitan, let him be judged before the primate of the diocese or before the Pope of the universal Apostolic Church.

C. XVI. One who has a judge whom he suspects shall appeal to the Roman See.

[Likewise Felix II, to the Bishops assembled in the Synod of Alexandria, c. 19]. Whenever bishops think themselves excessively burdened by their coprovincials or by the metropolitan, or hold them suspect, let them immediately appeal to the Roman See, and let it be lawful for them to go freely. And when they have appealed to the aforesaid Roman See or have asked to be heard by it, let no one presume to excommunicate them, to seize their sees, to take away their property, or to inflict any violence upon them before the case of both parties is concluded by the authority of the Roman Pontiff. If anything contrary to this has been presumed by anyone, it shall be nothing and shall lack force.

C. XVII. Concerning the same.

Likewise Pope Julius, [in the rescript to the Eastern bishops, c. 30]. Therefore the aforesaid privileges have been specially granted to this holy See, so that all the oppressed may receive aid from it, and those unjustly condemned restoration. GRATIAN. The oppressed and those thinking themselves excessively burdened are understood before sentence is given; those unjustly condemned, after it is given. Hence Eutychian, Bishop of the city of Rome, writes to all bishops, [letter II, c. 1]:

C. XVIII. Before the conclusion of a case it is lawful to withdraw through an appeal.

One is not to act in ecclesiastical business as in secular business. For even in secular business, after a person summoned under the laws has appeared and begun to contend in the forum, it is not lawful for him to withdraw before the case is completed. But in ecclesiastical business, after the case has been stated, it is lawful to withdraw if it is necessary or if he sees himself being excessively burdened. GRATIAN. Part III. But those who through contumacy have been unwilling to obey the judges shall be deprived of communion. Hence in the Council of Milevis, [c. 24]:

C. XIX. Let one who has been unwilling to obey his judges be excommunicated.

Whoever has been proved unwilling through contumacy to obey the judges: when this has been proved to the bishop of the first see, let him give letters so that none of the bishops shall communicate with that person until he obeys. GRATIAN. Likewise, that an appeal can be made after sentence is given is attested by Pope Fabian, who says, [to Bishop Hilary, letter III, c. 2]:

C. XX. An appeal shall not be denied to one whom a sentence has destined for punishment.

Let it be lawful to appeal even in criminal cases, and let the plea of appeal not be denied to one whom a sentence has destined for punishment. GRATIAN. The same author affirms this above, [in the same chapter]:

C. XXI. It is lawful for someone to appeal before sentence is given.

If anyone has perceived a judge to be adverse to him, let him utter the plea of appeal. GRATIAN. Part IV. But one who wishes to appeal after sentence has been given shall appeal within five days; within those same days he shall receive dimissory letters from the judge from whom he has appealed, and

within those same days he shall set out on the journey to the judge to whom he has appealed. Hence it is found to have been established thus in the Theodosian laws:

C. XXII. Within what time after sentence is given each person ought to appeal.

On account of the excessive license of appellants, lest they appear to have free discretion in reconsidering or revoking sentences, both periods for appeal and penalties have been established, so that whoever wishes to appeal before the judge who heard his case and to appeal to another judge shall appeal within five days, shall arrive without any evasion before the judge to whom he has appealed within these same five days, and the very day on which he received the letters shall be counted particularly among these five days. But if the journey is longer, in addition to the five days—

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C. XXIII.

—when a reckoning has been made, twenty miles of daily travel shall be computed for each day.]

C. XXIV. Dimissory letters are to be directed from the judge from whom the appeal is made to the judge to whom it has been made.

Likewise, [in the same place, title XXXIV]. From the judge from whom an appeal has been made, dimissory letters are to be directed to the judge who will take cognizance of the appeal; these are commonly called *apostoli*. Their request and receipt must officially be completed within the fifth day. These matters have already been interpreted above under the title concerning cautions and penalties for appeals. § 1. Those who have not requested, received, or delivered the dimissory letters within the established periods shall be excluded from bringing the action by a procedural bar and compelled to bear the penalty for appeal.

C. XXV. Concerning those who appeal for the sake of delay.

Likewise, [in the same place, title XXXV, c. 2]. If anyone has appealed not from confidence in a just case but for the sake of introducing delay, lest sentence be pronounced against him, or, after confessing concerning his own deed, has wished to appeal lest he be condemned, appeals of this kind shall not be received.

C. XXVI. When a possessor appeals, while the outcome of the case is uncertain the fruits of the possession shall be sequestered.

Likewise, [in the same place, title XXXVI, c. 1]. Whenever, after the case has been heard, the possessor appeals from the judge, the fruits of the possession which is in dispute are deservedly sequestered while the outcome of the hearing to be pursued is uncertain. For if the claimant has appealed, this cannot be demanded from him, because that which he does not have cannot be sequestered. § 1. If an appeal is made concerning urban estates or slaves, their possessions or rents, or even the freight charge if the action concerns the freight of a ship, are customarily deposited.

C. XXVII. One who appeals unjustly is in every way to be punished.

Likewise, [in the same place, title XXXVII, c. 1]. Whenever an appeal is pronounced unjust, the appellant is in every way to be punished, so that he is compelled to repay the expenses which his

adversary incurred while pursuing it, not singly but fourfold. GRATIAN. By the foregoing authorities each person is permitted to appeal within five days after sentence is given. Justinian afterwards corrected this in his constitutions and decreed that the remedy of appeal was to be given to each person within ten days, saying:

C. XXVIII. The remedy of appeal is granted within ten days.

Emperor Justinian Augustus. Imposing very many remedies upon the severity of the earlier laws, and especially making these provisions concerning appeals, we have deemed it necessary in the present instance also to arrive at a benefit of this kind. For it had been provided by antiquity that, if anyone conducted litigation in person and was condemned, he had the license to appeal for only two days; but if a case was argued through a procurator, it was extended to the next three days. From experience of affairs, however, we found this to be sufficiently harmful; for many men, ignorant of the subtlety of the laws and thinking that appeals were to be presented within three days, fell into immediate danger and lost their cases when two days had elapsed. Hence we deemed it necessary to provide a suitable remedy for a matter of this kind. And we decree that all appeals—whether the cases are argued in person, through procurators, through defenders, or through curators and tutors—can be offered to the judges whom it concerns, whether great or lesser, within the space of ten days to be numbered from the reading of the sentence, with the most exalted praetorian prefecture excepted. Thus it shall be lawful for a man to deliberate most fully within that space whether he ought to appeal or to remain at rest, so that the work of appeal may not be undertaken repeatedly because fear presses upon him, but all may have an opportunity for examination, which can restrain the unconsidered ardors of men.

§ 1. In addition, we decree that, if at any time litigation is expected to be brought into our consistory and it should perhaps happen that the imperial majesty, occupied with public cases through provisions for worldly affairs, cannot convene the Fathers so that the case may be argued, the litigation shall not be endangered by this. For what fault is it of the litigants if the imperial summit is occupied? Or who is of such authority that he can constrain an unwilling prince to convene the Fathers and the other nobles? But if anything of this kind has occurred, the case shall remain untouched until the emperor, moved of his own accord, orders the nobles to be convened, permits the litigation to be introduced, and permits all things to proceed according to custom.

§ 2. In a third chapter, that also must be arranged which antiquity established well but novelty neglected. For when the venerable authority of antiquity so ordered the magistrates that some were greater, some intermediate, and some lesser, and appeals from lesser judges were remitted not only to the greatest judges but also to the tribunal of judges of spectable rank, so that they too might conduct the litigation with the sacred court employed, novelty abandoned this. It happened, therefore, that our greatest judges were disturbed over the smallest cases, and men were wearied by great expenditures on account of the smallest cases, so that perhaps the valuation of the entire litigation would not suffice for judicial expenses. We therefore decree that, whenever an appeal from the Egyptian region or either Libya joined to it is expected, up to the amount of ten pounds of gold, it shall not come to this royal city but to the Augustal prefect, who shall hear and decide the case in the place of the sacred cognizor, with no appeal to be presented to them after the final sentence. In like manner, whenever anything of this kind has arisen in the Asian or Pontic diocese, appeals up to the aforesaid amount of ten pounds of gold shall be remitted to the men of spectable rank—perhaps

counts, proconsuls, praetors, or governors—to whom we have specially assigned the conduct of those litigations, so that they too, after the likeness of the Augustal prefect, may intervene in the place of the sacred cognizor and bring the cases to decision with no hope of appeal, in fear only of God and the laws. But the eastern regions shall send cases suspended by appeal and limited to the amount of ten pounds of gold to the man of spectable rank, the Count of the East, who in like manner will impose a hearing and an end upon them.

This, of course, is to be observed: men of spectable rank or other judges of spectable rank shall not transmit their appeals in litigations, of whatever amount they may be, to other judges adorned with the same spectable rank—since appeals ought not to be referred to equal judges, but ought to ascend from a lesser judgment to a greater tribunal. Instead, their appeals, of whatever amount they may be, as was said, shall be directed to the most illustrious prefecture, which shall decide them together with the eminent man who is quaestor at that time, with both offices providing assistance: that is, both from the sacred bureaus according to custom and from the praetorian prefect. Yet we decree these things in such a manner that neither from dukes nor from other judges of spectable rank—to whom perhaps, even if they are private persons, the imperial majesty has entrusted cases—shall an appeal proceed to the aforementioned judges of spectable rank, lest the case appear to proceed not by steps but perversely. Rather, it shall be referred from provincial governors and judges assigned by us, if they are not judges of spectable rank, within the aforementioned amount. But if those assigned by us as judges are illustrious, whose summits of dignity are above spectable rank, or if they are dukes, who in every respect are adorned with spectable rank, or if those delegated by the prince possess spectable dignity, their appeals, under whatever amount, shall be referred in the ancient manner to the competent judges in this royal city. All other things established in appeals, whether by ancient lineage, by the authority of earlier constitutions, or by our humanity, are to be kept untouched and inviolate.

[C. XXIX.]

From the Digest, under the title *When an Appeal Is to Be Made*, law 1, [§ *Two days*]. Two or three days for an appeal shall be computed from the day on which sentence was delivered. § 1. What, then, if sentence was spoken under a condition? Do we compute the time for appealing from the day of the sentence, or from the day on which the condition of the sentence was fulfilled? Certainly a sentence ought not to be stated under a condition; but if it has been so stated, what will be done? It is useful that the periods for appealing ought to be computed immediately. § 2. What is prescribed concerning sentences—that an appeal be made on either the second or the third day—is also to be observed in the other matters from which, although a sentence is not indeed pronounced, an appeal nevertheless ought and can be made, as when someone is nominated to a tutorship or to other civil duties and his excuse is not admitted. § 3. If perhaps immediately after sentence has been spoken, the person who pronounced it has not made himself available, as is accustomed to happen, it must be said that this does no harm to the appeal. For as soon as the appellant has an opportunity to approach him, he will be able to appeal. Therefore, if the judge immediately withdrew himself, aid is similarly to be given. § 4. What, then, if the circumstance of the hour causes him to withdraw? If perhaps sentence was spoken at the very last hour, he will surely not appear to have withdrawn himself. § 5. We always understand there to be an opportunity to approach if he has made himself available in public. But if he has not done so, is it to be imputed to anyone that he did not come to the judge's house, did not

approach him in his gardens, and, further, did not go to his suburban villa? The better view is that it ought not to be imputed. Accordingly, if there was no opportunity to approach him in public, it will be better said that there was no opportunity to approach. § 6. If anyone did not have an opportunity to approach the very person from whom he appealed in order to give him the petitions, but does have access to the person to whom he appealed, it must be considered whether it can be pleaded against him as a procedural bar that he did not approach the latter. We follow this law: if there was an opportunity to approach the latter, the procedural bar has effect. § 7. It is evident that a person's own case is one whose advantage or loss pertains to him in his own name. § 8. If sentence has been pronounced against an absent person, the two or three days are to be computed from when he knows, not from when it was pronounced. But when it is said that an absent person can appeal from when he knows, we understand this thus: if he was not defended in the case through a procurator. For if the procurator did not appeal, it is difficult for the principal to be heard.

§ 9. If the governor of a province has indeed marked a person down for deportation to an island, and the emperor has rescripted that he be deported, let us consider when an appeal is to be made: when the emperor rescripts, or when the governor writes to him? I think an appeal is to be made when the governor orders that the person be taken into custody. But it is to be feared that it may be too late for an appeal to be made when the emperor has assigned him an island; for at that time the emperor customarily assigns an island after the governor's sentence has been approved. Again, this is to be feared: if the governor has burdened before the prince, with falsehoods, the person whom he labors to have deported, he closes off the road of appeal. What, then, is the answer? It will rightly be said, at the suggestion of humanity, that an appeal is not made fruitlessly both at this and at that time, because he has appealed not against the prince but against the craftiness of the judge. § 10. Let us consider this: if, when a letter was being written to the emperor, a copy of the letter was produced to the litigant and he did not appeal, and afterwards a rescript was issued against him, can he appeal from the letter previously produced to him? Since one who did not appeal at that time appears to have consented that the things written were true, he is not to be heard if he says that he awaited the outcome of the sacred rescript.

C. XXX.

From the title *On Appeals That Are to Be Received or Not*. Part V. Appellants are not customarily heard unless they are persons whose interests are involved, persons to whom a mandate was given, or persons conducting another's business which the defendant would immediately ratify. But even if a mother has appealed from filial devotion, it must be said that she too ought to be heard; and if she has preferred to take care that litigation be prepared, she does not appear to intermeddle, although she cannot defend at the beginning. § 1. An appeal can be made before sentence if a judge has interlocutorily ordered that torture be applied in a civil matter, or in a criminal matter if he does this contrary to the laws. § 2. The request of one who frustrates the conduct of a case for the reason that he says he has given a petition to the prince and awaits a sacred rescript is prohibited from being heard; if he has appealed for that reason, the sacred constitutions prohibit his appeal from being received.

C. XXXI. Concerning dimissory letters.

[Likewise Marcian, book 2 *On Appeals*, under the title *On Dimissory Petitions*, sole law]. After an appeal has been interposed, letters are to be given by the judge from whom the appeal was made to the person who will take cognizance of the appeal, whether the prince or someone else; these letters are called dimissory letters or *apostoli*. The sense of the letters is as follows: that, for example, Lucius Titius has appealed from that sentence which was pronounced between him and Maevius. It is sufficient to have requested the dimissory letters urgently and repeatedly within the prescribed time; and if he does not receive them, let him formally attest that very fact. For the constitutions require urgency from the person requesting dimissory letters. It is just, therefore, that, if it was due to the person who ought to give the letters that he failed to give them, this should not harm the person receiving them. § 1. Under the title *That Nothing Be Altered*. When an appeal has been interposed, whether it has been received or not, nothing ought to be altered in the meantime. § 2. If anyone condemned for several crimes has appealed concerning some but not others, it is asked whether his punishment is to be delayed or not. If the crimes concerning which the appeal was interposed are indeed graver, but that concerning which he did not appeal is lighter, the appeal is in every way to be received and the punishment delayed. But if he deserved a graver sentence from the category concerning which no appeal was made, the punishment is in every way to be imposed.

GRATIAN. The form of the *apostoli* is this: "I, N., bishop of the holy church of Bologna, by these *apostoli* release you, Roland the priest, chaplain of Saint Apollinaris, from observance of my judgment to the Apostolic See to which you have appealed." The form of an appeal is this: "I, Adelinus, minister of the church of Saint Regina, although unworthy, perceiving myself to be excessively burdened by lord Walter, archbishop of the holy church of Ravenna, appeal to the Roman See and request *apostoli*." § 1. But if he wishes to appeal after sentence has been given, this will be the manner of appealing for him: "I, A., minister of the church of Saint Regina, although unworthy, appeal to the Roman See against the sentence unjustly delivered against me by lord Walter, archbishop of the holy church of Ravenna, on the day before the Kalends of May, in the year of the incarnation of the Lord 1105, on the fourth day of the week, and request *apostoli*." § 2. But if one or two persons wish to appeal on behalf of several, they shall appeal thus: "We, G. and P., syndics of the canons of the holy church of Bologna, perceiving ourselves to be excessively burdened, or against the sentence, etc., appeal to the Roman See and demand *apostoli*." Appeals of this kind ought to be made in writing. A Catholic, however, is not permitted to appeal to the judgment of a person of another faith. Hence in the Fourth Council of Carthage, [c. 7]:

C. XXXII. Let a Catholic who commits his case to the judgment of unbelievers be excommunicated.

A Catholic who appeals his case, whether just or unjust, to the judgment of a judge of another faith shall be excommunicated. GRATIAN. Part VI. It is to be noted, however, that there are certain judges from whom one ought not to appeal. Hence it is read in the Council of Milevis, [c. 24]:

C. XXXIII. From which judges it is not lawful to appeal.

It shall not be lawful to appeal from judges whom common consent has chosen. GRATIAN. This is to be understood of arbitrators. For of judges, some are arbitral and others ordinary. Ordinary judges are those who receive lawful power from the apostolic pontiff, as ecclesiastical judges do, or from the

emperor, as secular judges do. Arbitral judges are those who, possessing no power, are chosen as judges with the consent of the litigants, and to whom the matter is committed so that their sentence may be obeyed. Of these, some are ordinary and arbitral, while others are arbitral only. Ordinary and arbitral judges are those who, possessing lawful power, are chosen as arbitrators by persons who are not subject to their jurisdiction. Although these sit as arbitral judges and not as ordinary judges, nevertheless, by the privilege of their ordinary dignity, someone who is burdened will be able to appeal from them. Hence it is read in the Third Council of Carthage, [c. 10]:

C. XXXIV. It is lawful to appeal from judges who are chosen by common consent.

Indeed, if judges have been elected by consent of the parties, it shall be lawful to appeal even from a smaller number than has been established.

C. XXXV. Those who complain concerning judgments of bishops shall be heard by neighboring bishops, or by others added with their consent.

Likewise from the Council of Milevis, [c. 22]. It was resolved that, if priests, deacons, or other lower clerics complain concerning the judgments of their bishops in cases which they have, neighboring bishops shall hear them and settle between them whatever is at issue, with others added by the neighboring bishops with the consent of their own bishops. But if they think that an appeal is to be made even from them, let an appeal be made only to African councils or to the primates of their own provinces. But those who think that an appeal is to be made overseas shall be received into communion by no one within Africa. GRATIAN. Unless perhaps they have appealed to the Roman See. But one who has appealed ought not to be remitted to the judge from whom he appealed. Hence in the Council of Sardica, [c. 7]:

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If a bishop has been accused, and all the assembled bishops of that region have judged and have cast him down from his rank, if the person who appears to have been cast down has appealed and has fled to the most blessed bishop of the Roman Church and wishes himself to be heard, then, if the Roman bishop thinks it just that the examination be renewed, let him deign to write to those bishops who are in the neighboring and adjoining province, so that the bishops may diligently investigate all things and determine them according to the faith of truth. But if the person who requests that his case be heard again moves the Roman bishop by his supplication to send priests from his side, it shall be in his power what he wishes and what he judges. And if he decrees that persons are to be sent who are present to judge with the bishops, so that they also possess the authority of the person by whom they were sent, it shall be in his discretion. But if he believes that the provincial bishops suffice to impose an end upon the business, he shall do what he has judged most wisely in his counsel. GRATIAN. Those who are arbitral only are persons who have received no lawful power; it is not lawful to appeal from them, because this is to be imputed to those who chose such persons for themselves. But if the sentence of those from whom appeal is made has been dissolved, it shall harm them in no respect, unless perhaps they are proved to have rendered an unjust sentence after being corrupted by enmity or money. Hence it is read in the same Third Council of Carthage, [c. 10]:

C. XXXVII. When a sentence is dissolved through an appeal, it ought not to harm one who did not judge with an unjust mind.

Part VII. This also was resolved: when an appeal has been made from any ecclesiastical judges to other ecclesiastical judges where there is greater authority, it shall not harm those whose sentence was dissolved, if they could not be convicted of having judged either with a hostile mind or after being corrupted by some cupidity or favor. GRATIAN. But it is asked concerning the person from whom appeal is made whether he is to be summoned as a witness before the person to whom appeal is made concerning the business of which he undertook cognizance. Concerning this it was established thus in the Fifth Council of Carthage, [c. 1]:

C. XXXVIII. A cleric shall not be summoned as a witness in that case of which he first undertook cognizance.

It is to be established that, if anyone wishes to conduct in the Church any case under the apostolic law imposed upon the churches, and perhaps the decision of the clerics has displeased one party, it shall not be lawful for the cleric who was present or was the cognizor to be summoned in the judgment as a witness, and no ecclesiastical person of any kind shall be assailed to give testimony. GRATIAN. Furthermore, from those to whom appeal was made, as is read in the African Council, [c. 63], it is not lawful to appeal further:

C. XXXIX. It is not lawful to appeal from those to whom appeal was made.

But if an appeal has been made, let the person who appealed choose judges, and together with him the person against whom he appealed, so that thereafter it shall be lawful for neither to appeal from them. GRATIAN. This is to be understood after the second appeal, for it is not lawful to appeal a third time in one and the same case upon the same heads. Hence Emperor Justinian writes in book VII of the Code, under the title *It Shall Not Be Lawful to Appeal a Third Time in One and the Same Case*, [sole law]: "If anyone has appealed a second time in any litigation whatsoever, it shall not be lawful for him to use an appeal a third time in the same litigation upon the same heads, or to reconsider the sentences of the most excellent praetorian prefects. License is to be given to litigants, when an arbitrator has been assigned, to invoke the hearing of the very person who assigned him before joinder of issue, with a petition of this kind by no means obtaining the force of an appeal. § 1. But when a challenge has been made in a capital case or a case concerning civil status, those appealing ought to conduct their case not through procurators but in person." Hence Pope Hadrian says, [in the chapters collected by him, c. 44]:

C. XL. It is not lawful to pursue through a procurator an appeal interposed in a capital case or a case concerning civil status.

Whenever a challenge has been made in a capital case or a case concerning civil status, it is to be conducted not through procurators but by the parties themselves. GRATIAN. The period for pursuing an appeal is one year, or, if a just cause has intervened, two years. Hence it is read in the Authentic Constitutions, constitution II, collation V:

[C. XLI.]

"If anyone appeals, a year shall be allowed, within which he shall pursue the litigation individually or jointly; or, if a just cause has intervened, another year is granted. When it has passed without the

litigation being completed, the sentence remains. § 1. If the appellant is inactive, when one month remains of the two years it is lawful for the victor to enter so that the defendant may be sought; whether he has or has not been found, the victor shall present his allegations so that the sentence may either be confirmed or rescinded, with the absent party being condemned in every case for the expenses. If neither appears, the sentence remains after the second fatal period." In constitution II, in collation IV: § 2. "But litigation which is expected to be brought into the consistory of the prince remains untouched without harm from delay until he himself causes it to be introduced and decided by the nobles according to custom."

[GRATIAN.] But if the person who appealed, led by repentance, wishes to desist from the appeal, he is not prohibited, as the Emperors Arcadius and Honorius are read to have established in book VII of the Code, under the title *On Appeals and Consultations*, [law 28]: "If anyone has presented appellate petitions, let him know that he has license to change his decision and recover his petitions, lest the humanity of just repentance be cut off." § 1. There are, moreover, times when it is not necessary to interpose an appeal. For in the same book and under the same title, [law 27], the same Emperors decreed: "Nominations made by petitions or edicts without a public council are not valid, and it is not necessary to appeal from them."

Part VIII. § 2. Likewise, a final sentence which contains neither condemnation nor absolution is held as nothing. § 3. Likewise, a sentence delivered by a governor outside the customary order of judgments does not obtain the authority of a matter adjudged. § 4. Likewise, if a sentence has been delivered contrary to matters previously adjudged from which no appeal was made, it will not obtain the authority of a sentence, and therefore it is not necessary to appeal from it. § 5. Likewise, if a sentence is rendered contrary to written law—for example, when it is said that a deceased person was under fourteen years of age and lawfully made a testament—it obtains no force, nor is the aid of an appeal against it necessary. § 6. But if a sentence is spoken contrary to the right of a litigant—for example, when it is pronounced that a person under fourteen completed his fourteenth year and therefore lawfully made a testament—it is necessary to flee to the remedy of appeal. § 7. Likewise, if several judges have been assigned and it is alleged that only one of them pronounced sentence, there appears to be no necessity to appeal, since the sentence does not hold by law. § 8. Likewise, when judges can impose a fine according to a fixed basis and limit, if they have otherwise imposed a fine contrary to the measure established by law, that which appears to have been done contrary to law possesses no firmness and can be rescinded without appeal. § 9. It has also been decreed that venal sentences, which are delivered for a payment by corrupted judges, are invalid even without the aid of an interposed appeal. § 10. Likewise, if you have proved that because of the infirmity of your age you are incapable of the honor to which you were nominated, the unjust nomination will be removed without an appeal.

§ 11. There are also persons whose appeals are not received. For the appeal of one who, absent through contumacy, was condemned after he had been summoned to conduct the case once the business had first been examined summarily cannot be received. § 12. Likewise, let no homicide, poisoner, practitioner of magic, adulterer, or any of those who committed manifest violence be heard when appealing if he has been convicted by arguments, overcome by witnesses, and confessed the vice and crime even by his own voice. And this applies in notorious cases. § 13. But in hidden cases: if, after witnesses were produced, instruments presented, and other arguments furnished, sentence

was delivered against him, and the person who was condemned either did not confess by his own voice at all or said something against himself after being terrified by fear of tortures, license to appeal is not denied him. § 14. Furthermore, an appeal from the sentence of his own judge shall be granted to no official, except only in a business which he perhaps began before his own judge on a civil basis concerning his patrimony. § 15. Likewise, whenever satisfaction of a fiscal account is demanded, a tax is exacted, or repayment of a public or even private debt which is evident and proved is demanded, judicial rigor is necessarily exercised against the contumacious person with appeal excluded. § 16. It is not possible to appeal from the execution of a sentence, unless perhaps the executor of the sentence exceeds the measure of the judgment. § 17. Likewise, if anyone has dared to appeal lest the will of a deceased person written in a testament be disclosed or lest those who have become known as written heirs be sent into possession, and the person who has cognizance of the matter has received the appeal, both the judge who so sluggishly showed connivance and the litigant who so inopportunely appealed shall be fined twenty pounds of silver. § 18. Likewise, if a case is stated concerning possession and its momentary state, which sentence is called interlocutory, even if an appeal has been interposed, the delivered sentence nevertheless shall take effect. § 19. Sometimes several persons together receive one and the same condemnation, and the diversity of deeds admits no separation. In that case, if all have appealed and, when one of them conducts the case, their appeal has been pronounced just, the benefit of the victory will also pertain to the others. But if only one has appealed and his appeal is pronounced just, it also benefits the person who did not appeal. § 20. But if one person has obtained restoration against a sentence by the aid of his age, this rescript does not benefit an adult who did not appeal by his own right. § 21. It appears, however, that not only has the necessity of receiving an appeal been imposed upon judges, but spaces of thirty days from the day of sentence have also been defined, within which it is proper that the record, together with the report, be furnished to the litigants. § 22. Similarly, an arbitrator is compelled to receive an appeal and give a report if he was delegated. § 23. Litigants, moreover, have the opportunity to appeal immediately by voice, even without petitions written out, when the matter adjudged demands it, both in civil and in criminal cases. § 24. No recourse can be made from the person who takes cognizance of the appeal to the judge from whom the appeal was made. Therefore, let them understand that the occasion for remitting litigants to the provinces has been taken away from them and completely excluded, since concerning every case in which an appeal has been interposed it is lawful to pronounce only that the appeal is either unjust or just. § 25. You will find all these things in book VII of the Code, from the title *On Appeals and Consultations* as far as the title *It Shall Not Be Lawful in One and the Same Case*.

Question VII

GRATIAN. Part I. That laymen are not to be heard in the accusation of bishops is attested by Pope Evaristus, who says, [to the Bishops throughout Egypt, letter II]:

C. I. Laymen are not to be received in the accusation of bishops.

A bishop is not to be reproved or accused by the people or by common persons, even if he is disorderly, because the life of rulers is disposed by God according to the merits of their subjects. I say these things for this reason: an ambusher is very often accustomed to turn good into evil and to place a stain upon the elect.

C. II. A layman shall not accuse a cleric.

Likewise Pope Sylvester, [in the epilogue of the Roman Council]. Let no layman dare to bring a charge against a cleric.

C. III. Concerning the same.

Likewise Pope Marcellus, [to the Eastern Bishops, letter II]. Let it not be lawful for a layman to accuse any cleric.

C. IV. One who has been anathematized cannot accuse priests.

Likewise Pope Julius, [in the decrees, c. 36]. It was established in the holy Synod of Nicaea that no one anathematized shall be received in an accusation before us, nor shall those persons who do not wish to receive us in an accusation before them, since we know that we have been constituted by the Lord over them, not they over us. And just as a greater cannot be judged by a lesser, so neither can he be bound by him, because everything great is rare. We bear the burdens of all who are burdened—or rather, blessed Peter the Apostle bears them in us, whose place we fulfill by legation and by whose rule we are formed—so that, supported by his aid, we may now and forever be defended from all adversities.

C. V. Concerning the same.

Likewise Eusebius, [to the Bishops of Gaul, letter I]. It has hitherto been observed and established that laymen have not accused bishops, because they are not of the same manner of life, and certain laymen are exceedingly hostile to them, especially since the bishops' life and manner of life ought to be separate and removed from the acts of laymen. Nor ought they to be assailed by those who do not wish to imitate their chastity and gravity, especially since the laymen do not wish to receive them in accusations against themselves.

C. VI. Neither clerics are to be received in the accusation of laymen, nor laymen in the accusation of clerics.

Likewise Fabian, Bishop of the city of Rome, to all the faithful. Just as priests or the other clerics are excluded from the accusation of secular laymen, so the laymen are to be excluded and removed from an accusation by the clerics; and just as the former shall not be received against the latter, so the latter shall not be received against the former, because, just as the manner of life of the Lord's priests ought to be separated from their manner of life, so also ought their litigation, because a servant of God ought not to litigate.

[PALEA.

C. VII. Concerning the same.

Likewise from the Council of Mainz. It was decreed that priests are able both to accuse their parishioners and to give testimony against them. But if they have neglected to do so, they shall be subject to peril of their rank.]

C. VIII. Laymen ought not to accuse clerics.

Likewise Clement, [to James, letter I]. Priests and the other ministers of the Church and all the people ought to love their bishops and obey their precepts, even if, which God forbid, they act otherwise, unless they have erred in the faith.

[C. IX.]

The same. Divine Scripture shows what kind of condemnation threatens those who sin against fathers. For if Ham was cursed because he did not cover his father's shame, those who inflict insult upon fathers who perform the legation of God are worthy of a much greater condemnation. GRATIAN. Persons of lower orders are not to be received in an accusation of those in higher orders. Hence Pope Sylvester, [in the epilogue of the Roman Council]:

C. X. Lesser persons ought not to accuse greater persons.

A cleric cannot bring an accusation or bear testimony against an exorcist; an exorcist against an acolyte; an acolyte against a subdeacon; a subdeacon against a deacon; a deacon against a priest; or a priest against a bishop.

C. XI. Concerning the same.

Likewise Pope Zephyrinus, [to the Bishops of Sicily, letter I]. Let no one among the highest be assailed by accusations of lesser persons.

C. XII. Concerning the same.

Likewise Pope Anacletus, [letter III]. By the sentence upon Ham, son of Noah, those are condemned who betray the fault of their teachers or prelates, like Ham, who did not cover his father's shame but displayed it for ridicule.

C. XIII. Sheep cannot accuse their shepherd unless he has strayed from the faith.

Likewise Pope Eusebius, [to the Bishops of Alexandria, letter II]. The sheep entrusted to their shepherd can neither reprove him—unless he has strayed from the faith—nor accuse him in any way, because the deeds of shepherds are not to be struck with the sword of the mouth, although they may rightly appear worthy of reproof. GRATIAN. Part II. By these authorities it is proved that subjects, whether laymen or clerics, cannot accuse their prelates. But this is to be understood of criminal and infamous persons, who are prepared to reprove the life of their prelates, not to imitate it. This is given to be understood from the words of Anacletus, who says:

C. XIV. Why laymen are not to be heard in the accusation of bishops.

Laymen are not to be heard in the accusation of bishops, because certain of them are exceedingly hostile to bishops, and it is unworthy that bishops be accused by those who do not wish to imitate their gravity.

C. XV. Priests can be accused only by suitable and approved men.

Likewise, [Anacletus to the Bishops of Italy, letter II]. The accusation of them, also, concerning which you wished to consult us, ought to be made only by suitable and most approved men who are free both of suspicions and of crimes, because the Lord did not wish the handlers of his sacred body to be defamed or calumniated by vile, reprobate, and unsuitable persons; rather, he himself cast the sinning priests out of the Temple with his own scourge. Hence it is clear that the highest priests, that is, bishops, are to be judged by God, not torn to pieces by human beings or by men of depraved life, but rather borne by all the faithful. The Lord himself gave the example, since in person and not through another he cast from the Temple the priests who were selling and buying. § 1. For, as I think, no one is found among us who wishes his servant to be judged by anyone other than himself. But if this has been presumed, either he himself grows angry with much indignation or, rather, seeks vengeance upon the other. § 2. Hence the Lord also says through the Prophet: "He who touches you touches the pupil of my eye." And a little later: § 3. If detractors of any persons whatsoever are judged severely and fall into the snare of perdition, much more are the assailants, detractors, and accusers of God's servants condemned; and unless they have corrected themselves, made worthy satisfaction to them, and performed penance, they undoubtedly go into the abyss and are burned by avenging flames. § 4. Considering these and other dangerous things, the Apostles established that the pillars of the holy Church of God—who are not undeservedly called the Apostles and their successors—should not easily be disturbed, torn to pieces, or accused. But if anyone has been stirred against them or their churches, or has a case, let him first have recourse to them with zeal for charity, so that, after being admonished in familiar conversation, they may heal those things which are to be healed and charitably amend those things which they have recognized are justly to be amended. But if any persons have presumed to tear them to pieces, accuse them, or assail them before doing these things, let them be excommunicated and by no means absolved before, through worthy satisfaction, as has already been said, they have performed penance, because an injury to them pertains to Christ, whose legation they perform.

C. XVI. One who complains to a primate against a bishop before approaching him familiarly shall be deprived of communion.

Likewise Alexander, [letter I, c. 3]. If anyone believes that he has any just complaint against a bishop or authorities of the Church, he shall not first approach the primates or other judges before repeatedly—indeed, very often—approaching familiarly the very persons by whom he believes himself injured, so that he may receive from them either his justice or an excuse. But if he has acted otherwise, let him be deprived of communion by them and by others as a contemner of the Apostles and the other Fathers.

C. XVII. Accusers of bishops shall not be heard unless their reputation has been examined.

Likewise Pope Evaristus, [to the Bishops throughout Egypt, letter II]. If there are any detractors or accusers of bishops or of the other priests, it is not fitting that they be heard by the judges of the Church before the suspicion or reputation concerning their standing is examined: with what intention, with what faith, with what rashness, with what life, with what conscience, or by what merit they have presumed these things—whether for God, for empty glory, from enmity, from hatred, or from cupidity.

C. XVIII. Those who are not of right faith and manner of life shall not accuse their elders.

Likewise Pope Callistus, [to the Bishops of Gaul, letter II]. In a judgment it is to be asked what manner of life and faith belong to the person who accuses and the person who is accused, because those who are not of right faith and manner of life, whose life is open to accusation, and whose faith and freedom are unknown, are not permitted to accuse their elders. Nor shall vile persons be received in the accusation of them.

C. XIX. An accusation of bishops shall not be received without two or three witnesses.

Likewise Pope Sixtus II, [to the Bishops of Spain, letter II]. An accusation of bishops is not easily to be received, for the Lord says: "You shall not receive the voice of a lie." And the Apostle says that a written accusation against a priest is not to be received without two or three suitable witnesses. If these precautions are to be taken concerning priests or the other faithful, how much more concerning bishops?

C. XX. No one shall be removed from communion merely for bringing an action against a bishop.

Likewise from the First Council of Orléans, [c. 8]. If anyone believes that something is to be reclaimed from a bishop, either concerning the right of the church or concerning his own right, if he has alleged nothing insulting or criminal, it shall not be lawful for him to be removed from the communion of the Church merely for bringing the action.

C. XXI. Why subjects cannot reprove their prelates.

Likewise Pope Evaristus, [letter II]. There are some who perversely reprove their prelates if the latter have been even a little troublesome to them. GRATIAN. From all these authorities it is given to be understood that those are removed from accusation who seek to defame and reprove the life of their prelates, not from an affection of charity but from the depravity of their own conduct. § 1. But that criminal persons are prohibited by the foregoing authorities from the accusation of prelates is attested by Augustine in the book of Soliloquies, who says thus:

C. XXII. Not all subjects, but only criminal persons, are prohibited from accusing prelates.

Prelates presume that they ought not to be reproved or accused because the canons do not establish that they are to be accused indiscriminately. Yet this is denied only to criminal persons, since Truth itself establishes concerning reproof: "If I have spoken badly, bear witness concerning the evil." GRATIAN. It is objected against this distinction: The sacred canons themselves distinguish in what case shepherds are to be accused by their subjects, saying: "Let sheep neither accuse nor reprove their shepherds unless they have strayed from the faith." Behold the case in which they are to be accused by subjects; in other cases, by no means. GRATIAN. Part III. § 1. The response to this objection is as follows: That distinction of the canons is understood of criminal and infamous persons. For criminal and infamous sheep cannot accuse or reprove their shepherd unless he has strayed from the faith. But if he has strayed from the faith, so great is the stain of that crime that, for

his accusation, slaves are admitted against a master, as are any criminal and infamous persons against anyone whatsoever. Hence Pope Dionysius, [to Bishop Severus, letter II]:

C. XXIII. Infamous persons cannot accuse heretics.

We cannot and ought not to receive an associate of an alien error, or one voluntarily departing from the path of his own purpose, or one not obedient to the sacred rules and constitutions of the Fathers. Nor do we permit them to assail those believing rightly or obeying the sanctions of the holy Fathers, because we judge to be infamous all who transgress their own law or the Christian law, or who willingly set aside apostolic or regular authority.

C. XXIV. Those who have abandoned the faith they received cannot accuse Christians or testify against them.

Likewise from the Fourth Council of Toledo, [c. 63]. One who has proved unfaithful to God cannot be faithful toward human beings. Therefore Jews who formerly became Christians and now have transgressed in the faith of Christ ought not to be admitted to give testimony, although they declare themselves to be Christians, because, just as they are suspect in the faith of Christ, so are they held doubtful in human testimony. The testimony of those who are shown false in the faith ought to be invalidated, nor are those to be believed who have cast away from themselves faith in the truth.

C. XXV. Heretics, Jews, or pagans cannot accuse Christians.

Likewise Pope Gaius, [to Bishop Felix]. Pagans, heretics, or Jews cannot accuse Christians or bring against them a voice of defamation. GRATIAN. In this chapter it is decreed that heretics shall not assail those believing rightly. From this it is understood, conversely, that heretics can be assailed by heretics. Likewise, persons voluntarily departing from the path of their own purpose cannot assail those observing the boundary of their profession. From this it is given to be understood that persons departing from their purpose can similarly charge other persons departing from theirs. Likewise, those not obeying the sanctions of the holy Fathers cannot accuse those obeying the sacred constitutions. In this it is similarly understood that disobedient persons are permitted to accuse disobedient persons. From this it is gathered generally that, in an accusation, equality of faith and manner of life between the accuser and the accused is always to be considered, so that the person who accuses is found to be either equal or superior.

[PALEA.

C. XXVI. A heretic can accuse a heretic and testify against him.

Likewise from the Novels, constitution 45, at the end. If a heretic litigates against a heretic, let either of them be permitted to bring forward a heretic as a witness. But if an orthodox person litigates against a heretic, the testimony even of a heretic shall indeed be valid for the orthodox person; but against an orthodox person only the testimony of an orthodox person shall be valid. § 1. But when orthodox persons are litigating, let no access to testimony lie open to any heretic.]

GRATIAN. But it is asked whether a most flagitious Catholic can bring an action against a heretic concerning a crime other than heresy. The response to this question is as follows: In that respect in which the heretic is inferior—namely, in the rule of faith—he can be accused by an evil Catholic. But in that respect in which he is superior—namely, in his manner of life—he cannot be brought to trial

by a most flagitious person. § 1. Likewise, the statement that shepherds are to be tolerated rather than corrected for their acts is understood in two ways: either because they are to be tolerated by criminal persons and not corrected—hence it is added there that the life of rulers is often depraved according to the merits of their subjects; therefore, those by whose merit, with God's permission, the life of rulers is depraved are rather to tolerate them than to correct them—or because there are certain persons who are often deserted by public proofs and are unable to prove the crime which they allege. Concerning these Augustine says in the homily on penance, [c. 12]:

C. XXVII. Things which cannot be proved by public proofs are to be tolerated.

Many good men suffer the sins of others and remain silent for this reason: they are often deserted by public proofs by which they cannot prove before judges the things which they themselves know.

GRATIAN. Part IV. That statement of Anacletus is also understood concerning these persons: "By the sentence upon Ham, son of Noah, those are condemned who betray the fault of their teachers or prelates, like Ham, who did not cover his father's shame but displayed it for ridicule." For by this authority subjects are not prohibited from accusation, but from betrayal. For it is one thing to betray, another to accuse. One betrays who reports things that cannot be proved; one accuses who, with the defendant present, offers a charge to the judge, intending to prove what he alleges. Ham alone saw his father's shame, and therefore by him are understood those who, since they alone are privy to the crimes of their prelates and therefore cannot accuse them, nevertheless offer their life for ridicule to others by defaming it.

§ 1. Likewise, it is objected that subjects, even religious subjects, cannot accuse their prelates. For it is read in Exodus that Miriam, the sister of Aaron—who first, after the passage of the Red Sea, merited to sing a hymn after taking up a timbrel—afterwards murmured against Moses because he had taken an Ethiopian woman as wife, and was struck with leprosy by the Lord. § 2. Likewise, it is read in the Book of Kings that, when David was fleeing from the face of Saul, he hid in a cave. When Saul turned aside into it to purge his bowels, David cut off the hem of his cloak; afterwards David grieved greatly and repented vehemently that he had done this. Saul had been rejected by the Lord and was persecuting David from envy in order to deliver him to death. David was a humble and gentle man, substituted by the Lord for Saul and anointed king through Samuel; but nevertheless, because he cut off the hem of Saul's cloak, he wept greatly, even though Saul surpassed him only in the administration of the anointing. From this it is given to be understood that subjects, although they are religious, cannot accuse their criminal prelates. For by Saul, who was purging his bowels, are understood prelates who bring into deed the malice conceived in the heart. Likewise, it is read in the Book of Kings that, when the Ark of the Lord was being brought back from Gibeah to Jerusalem, the oxen kicked and the Ark was tilted. When Uzzah the Levite applied his hand to it in order to raise it, he was struck by the Lord and died. By the Ark are understood prelates; by Uzzah, subjects; by the tilting of the Ark is understood the fall of prelates; and by the person who applied his hand are understood those who reprove or accuse the life of teachers, who are struck by the Lord and perish.

§ 3. The response to these arguments is as follows: It is true that prelates are signified by the Ark and subjects by Uzzah. But the assertion that the fall of prelates is signified by the tilting of the Ark is false. For it is one thing to incline or descend, another to fall. It is read that our Savior inclined

himself—as when he wrote on the earth with his finger—and frequently descended from the mountains which he ascended, whether to spend the night in prayer, to teach the disciples higher precepts on the mountain, or to look upon the crowds and be able freely to teach them from the height of the mountain while fleeing them. Inclination or descent signifies the humility by which spiritual persons sometimes condescend to carnal persons and suffer with their infirmity, according to the Apostle's statement: "Who is weak, and I am not weak?" They were also signified by the angels whom Jacob saw descending on the ladder. Concerning them it is also said through the Prophet: "He inclined the heavens and descended." By the inclined Ark, therefore, are understood those who mercifully bear the faults of their subjects and humbly suffer with their infirmity. Hence it is well said that, when the oxen kicked, the Ark was inclined. For the kicking oxen signify subjects not obeying their teachers; while prelates suffer with them, the Ark is as it were inclined when the oxen kick. The Levite who applied his hand signifies those who reprove the compassion of mercy in their prelates and wish to raise them into the bitterness of severity. Hence that Levite is well called Uzzah, for Uzzah is interpreted "strong." They are called strong because, while they presume upon their own justice, they think that mercy is to be denied to sinners and reprove those who extend it. Hence, struck by the Lord, they perish, because judgment without mercy will be for those who do not wish mercy to be shown to those who transgress. To such a person it is said through Solomon: "Do not be overly just, because there is a just person who perishes in his justice."

The passage concerning Moses is to be understood in the same way. For by Moses are understood prelates; by the Ethiopian woman, sinners are designated. Moses takes an Ethiopian woman as wife when any preacher joins a sinner to himself, so that from him he may be able to beget for God offspring of good works. When Miriam—that is, subjects—reproves this union, they are infected with the leprosy of sin. Or by Miriam is understood the Synagogue, which murmured against Moses—that is, Christ—because he joined to himself the Ethiopian woman, that is, the Church from the Gentiles; the leprosy of unbelief and error made them filthy. Therefore, by these authorities subjects are not prohibited from the accusation of prelates, but are admonished not to reprove their merciful compassion.

§ 4. Likewise, by Saul are understood prelates, and by David, subjects. Saul purging his bowels signifies those who bring outwardly into deed the malice conceived in the heart. But the reproof of sin is not signified in the cutting of the cloak. For by the cloak is understood the power of the kingdom. One cuts it who strikes a prelate with a sentence of condemnation, which is lawful for none of the subjects. For the deeds of a shepherd are not to be struck by subjects with the sword of the mouth, that is, by a sentence of condemnation. Hence Jerome says upon Mark concerning the high priest who tore his garments: The tearing of the garment signifies the tearing of the priesthood, which was soon to be torn and taken away from the Jews. Or by David are signified those who, seeing the wickedness of their prelates, despise their greater sins, but strive to reprove and tear apart the smallest and lightest ones, as though cutting off the outermost hem of the cloak. Or because Saul alone turned aside into the cave in which David alone was hiding. § 5. The same thing can be understood concerning this as was said concerning Ham, who alone saw his father's shame, which he did not cover but displayed for ridicule. Therefore, by this authority subjects are not prohibited from accusing prelates if they have been open to accusation.

§ 6. Likewise, it is proved that subjects cannot accuse their prelates, even if they are religious. For they are infamous by the very fact that they attempt to reprove the life of their teachers. For, as the authority of the canons hands down, all who take arms against fathers and who reprove or accuse the life of their teachers are infamous. But no infamous person is to be heard in the accusation of prelates unless perhaps the prelate has strayed from the faith, as was said above. Therefore, since subjects become infamous by the very fact that they leap forward into the accusation of prelates, while the opportunity to accuse is denied to infamous persons, it is evident that subjects cannot accuse their prelates. § 7. The response to these arguments is as follows: Not all prelates are held as prelates; for the name does not make the bishop, but the life. Hence Gregory writes to Bishop Januarius, [book VII, indiction 2, letter 1]:

C. XXVIII. One whom age, not life, makes an elder is to be severely rebuked.

Paul says: "You shall not rebuke an elder." But this rule of his is to be observed when the fault of an elder does not by its example draw the hearts of younger persons to destruction. But where an elder furnishes to the young an example leading to destruction, there he is to be struck with severe rebuke. For it is written: "All of you are a snare to the young," and again: "Cursed is the child of a hundred years."

C. XXIX. Dignity does not make a bishop, but life does.

Likewise Jerome to Heliodorus, [letter I, *On the Praise of the Solitary Life*]. Not all bishops are bishops. You attend to Peter; consider Judas. You receive Stephen; look upon Nicholas. § 1. Ecclesiastical dignity does not make a Christian. Cornelius the centurion, while still a gentile, is cleansed by the gift of the Holy Spirit; Daniel as a boy judges the priests. § 2. It is not easy to stand in the place of Peter and to hold the place of Paul, who now reign with Christ. § 3. Salt that has become insipid is useful for nothing except to be cast outside and trampled by swine.

C. XXX. The life of a bishop, not the name, merits reverence.

Likewise Augustine in homily VI. Not everyone who says, "Peace be with you," is to be heard as a dove. Ravens feed upon death. The dove does not have this habit; rather, it lives upon the fruits of the earth, and its food is innocent.

C. XXXI. The learned are sometimes deservedly reproved by the unlearned, and clerics by laymen.

Likewise Bede on the Second Epistle of Peter. "They followed the way of Balaam from Bosor, who loved the reward of iniquity, but received a rebuke of his madness. A mute beast under the yoke, speaking with a human voice, prohibited the folly of the prophet." Heretics very often bring forth dogmas so foolish and mysteries so execrable that even the dull understanding of pagans, and of those who are altogether without rational knowledge of God, detest their madness and, by thinking more sanely, refute their distorted paths contrary to God. And, what is worse, sometimes many Catholics love the reward of iniquity to such a degree that even the learned are deservedly refuted by the unlearned, and clerics by laymen. They are rightly compared to the prophet who is rebuked by the words of an ass speaking contrary to nature and nevertheless is not delayed from the purpose of his depraved journey. The name of the city from which Balaam is related to have come also most aptly agrees with them. For Bosor is interpreted "carnal" or "in tribulation." No other cause exists more

strongly for luxurious persons to adulterate the word of truth through love of money or temporal desires than that they have enslaved themselves to the concupiscences of the flesh. But the name of Balaam himself—which is interpreted "vain people" or "precipitating them"—also suits such persons. For what are those who voluntarily desert the recognized way of truth if not a vain people? And do they not cast their hearers into a precipice when they preach to them not salutary things which would correct them, but erroneous things which delight them? Concerning them it is aptly added: "These are fountains without water and clouds driven by whirlwinds, for whom the gloom of darkness is reserved."

GRATIAN. Therefore, because not all bishops are bishops, priests are indicated by Daniel as a boy, insipid salt is trampled by swine, and one who says, "Peace be with you," is often reckoned not a dove but a raven, it is evident that one is not always to desist from accusation on account of the office or authority of a person. Rather, one must proceed against depraved persons, since every person who sins criminally is altered and, so to speak, is judged under the laws to have diminished legal status. For one who commits sin is the servant of sin both in punishment and in guilt. Hence Augustine:

C. XXXII. One who does not administer the office he received is not a bishop but a shameless dog.

One who neither possessed in himself the principle of governance, nor wiped away his own transgressions, nor corrected the crime of his sons is to be called a shameless dog rather than a bishop. GRATIAN. Therefore, since Jerome, Augustine, and Gregory take away from such persons the name of dove, bishop, and elder, ought not the privilege of dignity also to be taken away, so that they can be reproved by their subjects? Hence Scripture, disregarding the privilege of depraved old age, says, "Cursed is"—not the elder, but—"the child of a hundred years." It is therefore evident that those become infamous through accusation of prelates who attempt to reprove and tear apart the life of those who hold the position of their governance not in name alone but in life and morals. But others become praiseworthy rather than infamous through the accusation of their prelates. Likewise, when it is said, "Let no greater person be assailed by accusations of lesser persons," the lesser are to be understood as lesser not in dignity but in life. Hence Jerome says of Paul upon the Epistle to the Galatians:

C. XXXIII. Greater and lesser persons ought to be understood according to life, not dignity.

Paul reproved Peter, which he would not have dared to do unless he knew that he was not unequal. GRATIAN. This is understood not of the office of ecclesiastical dignity but of purity of life and holiness of manner of life. For Peter alone held the primacy among the Apostles. Hence Augustine says to Jerome, [letter XIX, near the end]:

C. XXXIV. Not the name of bishop, but life, makes one greater.

Although, according to the terms which usage has established, the episcopate is greater than the presbyterate, nevertheless Augustine is lesser than Jerome.

C. XXXV. Although bishops are equal in merits, they nevertheless differ in grade of dignity.

The same in book II *On the One Baptism,* [against the Donatists, c. 1]. I think that without any insult to himself, Bishop Cyprian is compared to Peter the Apostle insofar as the crown of martyrdom is concerned. But I ought rather to fear lest I be found insulting toward Peter. For who does not know that the primacy of his apostleship is to be preferred to any episcopate? But even if the distinction of sees differs, the glory of the martyrs is nevertheless one. Likewise: When Peter is corrected by Paul, who was later, and, with the bond of peace and unity preserved, is advanced to martyrdom, how much more easily and more firmly is that which is confirmed by the statutes of the universal Church to be preferred either to the authority of one bishop or to the council of one province?

C. XXXVI. A son is equaled or preferred to his father not in honor but in truth.

The same, [tractate XXX on John, at the end]. A father complains concerning an evil son; a son complains concerning a harsh father. We preserve the honor which is owed to a father by a son. We do not equal the son to the father in honor, but we prefer the son to the father in truth, and we thus render the honor owed so that equity does not lose its merit.

C. XXXVII. Peter and Paul were equal in merits, although differing in rank.

Likewise Ambrose, [sermon LXVI, on the feast of Peter and Paul]. Blessed Peter and Paul stand eminent among all the Apostles and excel by a certain particular prerogative; but it is uncertain which of the two is to be preferred to the other. For I think those who are equal in suffering to be equal in merits, and those whom we see arrived together at the glory of martyrdom to have lived with a similar devotion of faith. § 1. For we do not think it was done without cause that they suffered on one day, in one place, under one persecutor. On one day, so that they might arrive at Christ together; in one place, lest Rome be absent from either; under one persecutor, so that equal cruelty might bind both. Therefore, the day was decreed for merit, the place for glory, and the persecutor for virtue. And in what place did they at last undergo martyrdom? In the city of Rome, which possesses the primacy and headship of the nations, so that where the head of superstition was, there the head of holiness might rest; and where the princes of the gentiles dwelt, there the princes of the churches might die.

GRATIAN. Part V. Likewise, penitents and twice-married men cannot accuse priests. From this it is gathered generally that whoever are not priests or cannot be priests cannot bring an accusation or testimony against priests. Hence Fabian says, [letter II to the Eastern Bishops]:

C. XXXVIII. Those who cannot be priests are unable to accuse priests.

The Apostles themselves and their successors established that those who are not and cannot be of their order shall neither accuse the priests of the Lord nor testify against them.

C. XXXIX. Those who are prohibited from being chosen to the priesthood are unable to accuse priests or testify against them.

Likewise Pope Damasus, [to Archbishop Stephen, letter III, c. 3]. Witnesses ought to be without any infamy, suspicion, or manifest stain and instructed in the fullness of the true faith; and they ought to be such as divine authority commands to be chosen for the priesthood. For, as the authority of the

ancients hands down, those who ought not and cannot be advanced to that same honor cannot charge priests with a crime or testify against them.

GRATIAN. Thus also that statement of Sylvester is understood: "A layman shall not accuse a cleric, etc.," that is, those constituted in a lower grade who cannot ascend to a higher one ought not to accuse those acting in higher grades. § 1. Behold, it has been shown what response is to be given to the authorities and arguments by which subjects appeared to be repelled from the accusation of prelates. Now it must be demonstrated by what reasons they are proved to be receivable, and what is answered to the contrary by prelates. Christ, who was the shepherd of shepherds, said to his sheep—of whom he said, "I was sent only to the sheep of the house of Israel who have perished, etc."—amid the insults and blows which he suffered from them: "If I have spoken badly, bear witness concerning the evil." Likewise: "Which of you will convict me of sin?" But all who are admitted to testify against or reprove someone can be admitted to accuse the same person. Therefore, since sheep are admitted to bear testimony against their shepherd and to reprove him, if they can, it is evident that subjects can accuse their prelates.

§ 2. The response to these arguments is as follows: Although Christ was the shepherd of his sheep, whom he fed by word and example, nevertheless, with regard to the distribution of offices—from which some now preside over others in the Church, whence some are called prelates and others subjects—he did not hold pastoral office among that people. For he had been anointed by neither mystical nor visible anointing as king or priest, which alone among that people were the persons who claimed the name of prelacy for themselves. Therefore, from this authority subjects are not proved to be admissible in the accusation of prelates; it is shown only that, when they are hearers, they can reprove and testify against those who, although they do not possess ecclesiastical offices, nevertheless strive by word and example to gain for God whomever they can.

§ 3. The response is also made in another way. It is one thing which we compel to be observed by the rigor of discipline, another which is admitted from consideration of perfection. Christ admitted the Jews to reprove him from the perfection of humility, not the severity of law. For if they had been admitted by the rigor of law, by this authority criminal and infamous persons would have to be received in the accusation of religious persons, since those who were treating concerning Christ's death and wished to condemn the innocent man were most criminal. Therefore, by this example prelates are not compelled to receive subjects in an accusation against themselves, but they are permitted to do so.

§ 4. Likewise, Paul reproved Peter, who was prince of the Apostles. From this it is given to be understood that subjects can reprove their prelates if they have been worthy of reproof. But this is easily refuted if one attends to the matter for which he was reproved. Peter was compelling the gentiles to Judaize and to depart from the truth of the Gospel, making a flock with the Jews and secretly withdrawing himself from the food of the gentiles. But to stray from the faith oneself and to cast others down from the faith by example or word are equal. Therefore, by this example prelates are not proved to be accusible by subjects unless perhaps they have strayed from the faith or compelled others to stray. § 5. Likewise, when Peter had entered to Cornelius, the brothers who were in Judea complained and reproved him because he had turned aside to a gentile. Behold, prelates can rightly be reproved by subjects. But blessed Gregory responded to this objection, saying, [to the Patrician Theoctista, book IX, letter 39]:

C. XL. When Peter was questioned by the faithful why he had entered among the gentiles, he did not respond from power but humbly rendered a reason.

Peter had received the power of the kingdom, and yet, when the same first of the Apostles faced a complaint made against him by the faithful as to why he had entered among the gentiles, he responded not from the power of his office—by which he could have said, "Let sheep neither accuse nor reprove their shepherd"—but from the authority of the divine power by which the gentiles had received the Holy Spirit. GRATIAN. Therefore, since Peter could have repelled the complaints by virtue of his office but was unwilling to do so, prelates are not compelled by this example to receive the reproof of subjects. That statement of Leo IV to Louis Augustus is also understood from this dispensation of humility:

C. XLI. The Apostolic pontiff promises to amend by imperial judgment if he committed anything unjustly against his subjects.

If we have acted incompetently in anything and have not preserved the path of just law among our subjects, we wish to amend all things by your judgment and that of your envoys, because, if we who ought to correct the sins of others commit worse things, we certainly will not be disciples of truth but, as we say with grief, teachers of error above all others. Therefore we earnestly implore the clemency of Your Magnitude to direct into these regions, for the investigation of the things which we have said, such envoys as fear God in all things and investigate all things diligently, just as if your imperial glory were present. We ask that they examine exactly not only those things which we said above, but, whether smaller or even greater matters concerning us have been reported to them, that all of them be concluded by their lawful examination, so that henceforth nothing concerning them may remain unexamined or undetermined.

GRATIAN. Part VI. Likewise, when Balaam the soothsayer was going to curse the people, the angel of the Lord opposed himself in the road to the ass upon which he was sitting and, with drawn sword, restrained her from the journey. When Balaam afflicted her with blows, she burst into speech and refuted the madness of the prophet. Therefore, if a mute animal, by angelic power, reproved the folly of a prophet, much more can subjects accuse their prelates. § 1. The response to these arguments is as follows. It is true that subjects are signified by the ass and prelates by Balaam. Nevertheless, by this example prelates are not proved to be accusible by subjects; rather, a form is given to subjects only for humbly resisting prelates if perhaps they wish to compel them to evil. For Balaam urging the ass to carry him to curse the people of God signifies those who by blows and tortures demand from subjects that they become their supporters and helpers in evil. But because the angel—that is, any preacher—with drawn sword, namely with the fear and horror of future vengeance openly preached, calls them back from consent to another's malice, it is lawful for them to burst into the voice of complaint and say to their prelates: Why do you afflict us with blows? Why are you unjustly angry with us? Have we ever been disobedient to you except now, when we are compelled to evil? See the one who prohibits the undertaking. Therefore, from this prelates are not proved to be accusible by subjects.

§ 2. Likewise, when David had committed adultery and homicide, Nathan the prophet was sent by God to refute him. Behold, prelates are to be reproved and rebuked by subjects. § 3. But it is to be noted that there are two persons by which this world is ruled, namely the royal and the priestly. Just

as kings preside in the affairs of the world, so priests preside in the affairs of God. It belongs to kings to inflict corporal punishment, to priests to impose spiritual vengeance. Therefore David, although by royal anointing he presided over priests and prophets in the affairs of the world, nevertheless was subject to them in the affairs of God. Hence kings were anointed by prophets and priests, and the sins of kings were expiated by their offering. § 4. Therefore, just as Ahaz was struck with leprosy by the Lord when he wished to usurp the offices of priests, so priests and prophets were not permitted to usurp the offices of kings. Therefore, when Nathan the prophet refuted the king, he carried out his own office, in which he was superior to the king; he did not usurp the king's office, in which he was inferior to the king. He admonished him to expiate his sins through penance; he did not deliver against him a sentence by which, as an adulterer and homicide, he would be condemned to death. § 5. Thus blessed Ambrose also excommunicated the emperor and prohibited him from entering the church. § 6. For just as a judge does not bear the sword without cause, so priests do not receive the keys of the Church without cause. The former bears the sword for the vengeance of evildoers but the praise of the good; the latter have the keys for the exclusion of persons to be excommunicated and the reconciliation of penitents. Therefore, by this example subjects are proved to be worthy of reproof by prelates, not prelates by subjects.

§ 7. Likewise, Daniel, exercising no lawful power, convicted the judges constituted by the people of false testimony and condemned them after conviction. It is established, therefore, that persons possessing no power can refute those raised to dignities. § 8. The response to these arguments is as follows. Miracles—and especially those of the Old Testament—are to be admired, not drawn into an example for our action. For many things were then granted which are now entirely prohibited. For Samuel then cut Agag, the very fat king of Amalek, into pieces; now it is lawful for no ecclesiastical person to conduct a judgment of blood. Phinehas then killed a Jew coupling with a Midianite woman, and it was reckoned to him as justice; today this would turn to the destruction of a priest's office. Therefore, by the example of Daniel, subjects would claim for themselves against prelates not only the power to accuse or refute but even to judge, if that which is permitted by no authority whatsoever were allowed to be assumed as an argument for our action. Rather, from this deed it is given to be understood that in the last times God would stir up the spirit of a younger boy, namely the one of whom it is said through the Prophet, "A child is born to us," and again, "Behold my child," who would convict and condemn the judges of iniquity—namely, the scribes and Pharisees—when they accused Susanna, that is, the Church, with false crimes and pronounced her guilty of adultery because she followed Christ.

§ 9. Likewise, Jerome relates in the book *On Illustrious Men* that Pope Damasus, accused of adultery by his subjects, purged himself with forty-two bishops. § 10. Likewise, Pope Symmachus, despoiled of his dignity in a Roman synod, is decreed first to be returned to his former status so that he might then come to the case and, if it thus appeared right, answer the allegations of the accusers. The matter appeared worthy to the greatest number of priests and deserved to take effect; and, when it was afterwards being arranged how he was to be accused, the aforesaid Pope came forward to plead the case, but was impeded by his rivals. Likewise Pope Gregory says concerning himself:

C. XLII. Blessed Gregory grants to others license to refute him.

If anyone wishes to refute us concerning these matters or contends that we act outside authority, let him come to the Apostolic See, so that there before the confession of blessed Peter he may justly

contend with me, and one of us may there receive his sentence. GRATIAN. From all these things it is gathered that subjects can reprove and accuse their prelates. But, just as was said of Christ when he said to the Jews, "If I have spoken badly, etc.," so it is to be understood concerning these persons: by their example they gave prelates the capacity to receive subjects in an accusation against themselves, but did not compel them.

[C. XLIII.] Likewise.

Paul, bishop of the city of Dioclea, is accused by his subjects concerning a fall of the flesh, convicted, and deposed, and another is substituted in his place. Whether this was done by dispensation of the accused or by rigor of law can be considered from Gregory's Register, to Bishop John [of First Justiniana], chapter CCXVII, where he says:

C. XLIV. Paul, bishop of the city of Dioclea, convicted by the accusation of his subjects, is deposed.

Nemesion, the bearer of these presents, coming to us, reported that Paul, bishop of the city of Dioclea, having fallen, among other evils, into a carnal crime, was accused and convicted by his own clerics and deposed by an episcopal sentence. Afterwards, coming with the aid of secular persons, he entered the episcopate in the manner of a robber and, after taking away the property of the church, expelled from it the most beloved Nemesion, bearer of these presents, who had been substituted for him, and almost brought him to the highest injury and death. Therefore let Your Fraternity take care to learn all these things, and compel him to return, with every delay or excuse ceasing, whatever he took away from the church. But if he has said that he took nothing from the church but his own property—although it was grave and unjust that he did not seek this from you or from his metropolitan but presumed to act by rash daring—nevertheless, if he took anything of his own, it ought to be established under the examination of Your Fraternity whether this is true. But that also is to be diligently investigated: whether he badly dissipated anything from the property of the church, so that he may be compelled in every way, from that which he now took away, to restore it and make satisfaction.

GRATIAN. By this statement Gregory does not avenge himself against the accusers or the persons who deposed him, but proceeds further against the deposed man, so that, if he should attempt again to aspire to the episcopate, he may be repelled in every way and thrust into a monastery to perform perpetual penance. Therefore, since Gregory repels in every way one aspiring to the episcopate and subjects him to grave penance, it is evident that he was accused and convicted by his subjects not through Gregory's dispensation but through the censure of the canons. And, so that we may now proceed not by examples but by laws, it must be seen what Gregory writes to Innocent and the other Bishops of Sardinia, [book VII, indiction 2, letter 8], saying thus:

C. XLV. That subjects can accuse their prelates.

Do not presume to set aside your metropolitan in any matter, except if—which we do not wish—it happens that you have some cause against him, so that on account of this you ought to seek the judgment of the Apostolic See.

C. XLVI. Subjects shall not neglect the life of prelates through any dissimulation.

Likewise to all the Bishops of the Council of Byzacena, [book X, letter 37]. Just as, he says, it is praiseworthy and discerning to show reverence and honor to one's superiors, so it belongs to rectitude and fear of God not to set aside through any dissimulation whatever things in them need correction, lest disease invade the whole body—which God forbid—if weakness has not been cured in the head. For certain things concerning your primate Clementius have been reported to us which, since they are so grave that they ought in no way to pass unexamined, cause us to exhort Your Fraternity to investigate in many ways with all solicitude and vigor of truth the things alleged; and, if they are as they have been heard, let them be cut away by canonical vengeance. § 1. We admonish, moreover, that neither regard for any person, nor favor, nor any enticement soften any of you away from the things reported to us or shake you from the truth; rather, gird yourselves priestly for the investigation of truth on account of God. For if anyone has presumed to be sluggish or negligent in this, let him know that before God he is a participant in the stated crimes, since he is not moved by zeal for God to examine minutely the causes of a nefarious deed. GRATIAN. If anyone contends that these are special cases and that a general rule ought not to be gathered from them, let him hear what Gelasius says in chapter XXVII, writing thus to all clerics of whatever order:

C. XLVII. Clerics shall report the transgression of their bishop to the ears of the Roman Pontiff.

Accordingly, let no cleric trust that he will be immune from apostolic offense if, in those things which apostolic authority has declared are to be followed salutarily, he has seen a bishop, priest, or deacon transgressing and has not immediately taken care to report it to the ears of the Roman Pontiff, provided that competent proofs are furnished, so that vengeance upon the transgressor may become a prohibition against transgressing for others. But otherwise every pontiff will in every way be an overthrower of his own order and honor if he has thought these things should be suppressed from any cleric or from the hearing of the whole Church.

C. XLVIII. Concerning the same.

Likewise. If you see your pontiff admit anything involving harm to the church, or among those things prohibited by our precept, immediately signify it to our ears by a report, so that we may determine what ought to be done.

C. XLIX. Clerics or laymen shall not be admitted to the accusation of bishops without examination.

Likewise from the Council of Chalcedon, [c. 21]. We decree that clerics or laymen indiscriminately accusing bishops or clerics and without proof are not to be received into an accusation unless the reputation of their standing is first examined.

C. L. Any person accusing bishops or others shall bring forward things to be shown by documentary proofs.

Likewise from a Roman Synod. If any bishop, deacon, or any cleric has been accused before bishops—for this ought not to be done elsewhere—by any person, whoever that man may be, whether of exalted honor or of another dignity, who has undertaken this kind of blameworthy contention, let

him know that he ought to bring forward things to be stated with proofs and things to be shown with documentary evidence.

C. LI. Those who cannot be advanced to the same order shall not accuse priests.

Likewise Pope Damasus to Archbishop Stephen, [letter III, c. 3]. As ancient authority hands down, those who ought not and cannot be advanced to the same honor cannot charge priests with a crime or testify against them.

C. LII. Only irreproachable persons shall be received in the accusation of their elders.

Likewise Pope Hyginus, [letter I]. Charges against elders shall not be made through others but through the very persons who allege the crimes, provided nevertheless that they have appeared worthy and irreproachable and have shown by public records that they are free from all suspicion and enmity and possess irreproachable faith and lead an irreproachable manner of life. GRATIAN. It is therefore gathered from all these authorities that subjects are to be admitted in the accusation of prelates. Now it must be seen whether monks are to be heard in the accusation of bishops. Pope Hadrian, [in the chapters, c. 31], appears to remove them from accusation, saying thus:

C. LIII. Monks cannot accuse priests or testify against them.

It was resolved to obstruct the plea of accusing priests and testifying against them for those whom we know to be dead not by human declarations but by divine ones, because a deadly voice ought rather to be prohibited than heard. GRATIAN. Likewise, in the Council of Chalcedon, [c. 4], it is prescribed that monks shall not presume to handle ecclesiastical actions.

C. LIV. Monks are not to be heard in an accusation.

Likewise Pope Pelagius II, [to the Bishops of Italy]. Let no monk undertake such things anywhere or presume to disturb secular or ecclesiastical business, because their voice is dead in such matters. GRATIAN. But it is one thing which is assumed from a presumption of rashness, another which is conducted from a necessity of charity. For monks cannot accuse bishops from presumption; from charity they can. Hence it is also prescribed in the canons that the chamberlains of a bishop shall be either religious clerics or chosen monks, so that they may be able to give testimony concerning his life. GRATIAN. Part VII. § 1. Likewise, that statement of Pope Eleutherius, [in the letter to the provinces of Gaul], is said generally to all:

C. LV. One who, although able, neglects to oppose the depraved is convicted of consenting.

To neglect to disturb the depraved when you can is nothing other than to foster them. Nor is one free from the scruple of hidden association who ceases to oppose a manifest crime. Likewise Jerome writes concerning himself as well as other monks in the first prologue of the Library, saying:

C. LVI. The life of one who does not resist those who destroy is convicted of benefiting the Church too little.

For holy rusticity benefits only itself; and as much as it builds the Church of Christ by the merit of its life, so much does it harm it if it does not resist those who destroy.

C. LVII. Subjects shall endeavor to reprove the vices of prelates.

Likewise Gregory. Subjects are to be admonished not to be subject more than is expedient, lest, when they strive to subject themselves to men more than is necessary, they be compelled to venerate their vices. The same, presiding over a general synod, said, [c. 2]:

C. LVIII. Clerics or chosen monks shall be the chamberlains of a bishop.

Since the life of a shepherd ought to be an example to the disciples, clerics very often do not know what the life of their pontiff is like in private, although secular boys know it. Concerning this matter, we establish by the present decree that certain chosen persons from the clerics or even from the monks shall serve in the ministry of the pontifical chamber, so that one who is in the position of governance may have such witnesses as see his true manner of life in private and take from assiduous observation an example of advancement. Likewise to Virgil, Bishop of Arles, [book IX, letter 49]:

C. LIX. A bishop ought not to have depraved men in his company.

It has reached us that our brother and fellow bishop Serenus of Marseille has altogether depraved men in his company, to such a degree indeed that he has as a familiar a certain priest who, after a fall, is said still to wallow in his iniquities. This is to be investigated minutely by you; and if it has been established thus, let it be your care to correct him in our place in such a manner that one who receives such a man may learn not to foster him with familiarity but rather to restrain him with vengeance, and that the one who is received may learn to wash away sins with tears, not to heap up iniquity with uncleannesses.

C. LX. Bishops shall always have with them men of good testimony.

Likewise Pope Paschal. Let bishops devote themselves to reading and prayer, and always have with them priests and deacons or other clerics of good testimony, so that, according to the Apostle and the institutes of the holy Fathers, they may be able to be found irreproachable. GRATIAN. Likewise John the Baptist, although he led the eremitical life, refuted with harsh rebuke the scribes and Pharisees, priests and Levites of the Jews, who came to him. § 1. Likewise it is determined from the canons: "Those who are able to ascend to the same grade can accuse priests." Therefore, since monks can praiseworthily attain to the grade of the priesthood, it is evident that they too can freely accuse priests.

Question VIII

GRATIAN. Part I. Concerning accusations, how they ought to be made is openly determined in the canons. For Pope Callistus says, [to the Bishops of Gaul, letter II]:

C. I. An accusation shall always be made in writing.

The persons of accusers shall never be received without a writing, nor shall any persons be permitted to accuse while the person whom they wish to accuse is absent.

[C. II.]

From book IV of the Code, under the title *On Proofs*, [final law]. Let all accusers know that they ought to bring into public cognizance a matter which is fortified by suitable witnesses, instructed by the clearest documentary proofs, or furnished with indications which are undoubted for proof and clearer than light.

C. III. An accusation ought always to be made in writing.

Likewise Pope Eutychian, [to the Bishops of Sicily, letter II]. Whoever he is who alleges a crime, let him come into judgment, indicate the name of the defendant, undertake the bond of formal inscription, and submit to a corresponding custody—with an appraisal of dignity nevertheless maintained. Let him know that he has no license to lie, since the likeness of the punishment calls calumniators to vengeance. But those who have recourse to diviners and magicians shall by no means be admitted to an accusation.

C. IV. Concerning the same.

Likewise Pope Sixtus III, [in the letter to the Eastern Bishops, c. 4]. One who alleges a crime shall write that he will prove it. And one who has not proved what he alleged shall himself suffer the punishment which he sought to inflict. But Pope Stephen appears to write to the contrary, saying, [letter II, c. 4]:

C. V. Concerning the same.

No person's accusation shall be received through writings, but by his own voice—if the person of the accuser is lawful and worthy—with, of course, the person whom he desires to accuse present, because no one can accuse while absent or be accused by an absent person. GRATIAN. But Pope Callistus prescribed that, with the person whom he accuses present, an accuser shall offer his accusation to the judge in writing and read the letters of his accusation in his own voice. Stephen, however, prohibits an absent person from daring to accuse anyone by a letter.

GRATIAN. Part II. § 1. But what the form of an accusation is and what the method of composing petitions is, Paul shows in the Digest, in the book *On Public Judgments*, under the title *On Accusations and Formal Inscriptions*, [law 3], saying: § 2. "The composition of petitions of formal inscription is as follows: the consul and the day. Before that praetor or consul, Lucius Titius declared that he was denouncing Maeva as a defendant under the Julian Law on Adulteries because he says that she committed adultery with Gaius Seius in the city N., in that man's house, in the month N., when N. were consuls. For both the place in which the adultery was committed and the person with whom it is said to have been admitted, and the month, are certainly to be designated. This is provided by the Julian Law on Public Judgments and is generally prescribed for all who denounce anyone as a defendant. But they shall not be compelled unwillingly to include either the day or the hour. But if the petitions of formal inscription have not been lawfully arranged, the name of the defendant is erased and the power to prosecute the defendant anew will arise. § 3. Likewise, the person who gives

the petition ought to subscribe that he has made the declaration, or another for him if he does not know letters. But if he alleges another crime—for example, that the person provided his own house so that a matron might suffer illicit intercourse, that he released an adulterer who had been caught, that he received a price for discovered illicit intercourse, or anything similar—that very thing will have to be included in the petition. If the accuser has died or another cause has impeded him so that he cannot accuse, or anything similar has occurred, the name of the defendant is erased upon the defendant's petition. This is also provided by the Julian Law on Violence and by a decree of the Senate, in such a manner that another is permitted to prosecute the defendant anew. But within what time, we shall consider; and indeed thirty available days are to be observed."

Causa III

GRATIAN. A certain bishop was cast down from his own see and petitions to be restored. After restoration he is brought into a case and requests periods of delay. At last a certain person not lawfully joined, two infamous persons, and three religious persons proceed to his accusation. The accusers produce witnesses from their own household, and others hostile to him outside his province. The defendant is brought before a criminal judge to be heard and judged by only one person. Certain absent accusers and witnesses strive to accuse him and testify against him by letter. When many heads were alleged against him, the accusers fail on the first. Finally the accusation is turned against the accuser.

(Question I.) Here it is first asked whether restoration is to be given to any persons whatsoever who have been despoiled. (Question II.) Second, concerning periods of delay: whether they are to be granted to any persons whatsoever only after restoration, or also after summons to a case. (Question III.) Third, for what number of months they are to be granted to both parties. (Question IV.) Fourth, whether infamous persons and persons not lawfully joined are to be admitted to an accusation. (Question V.) Fifth, whether witnesses from the household of the accusers are to be produced, or the plea of enemies is to be heard. (Question VI.) Sixth, whether the defendant is to be produced outside the province. (Question VII.) Seventh, whether the sentence of one whom malice equal to that of the defendant infects is to be heard. (Question VIII.) Eighth, whether a bishop is to be heard or judged by only one person. (Question IX.) Ninth, whether accusers or witnesses are able to utter the plea of accusation or testimony against an absent person. (Question X.) Tenth, whether those who fail under the first head are to be admitted to the following ones. (Question XI.) Eleventh, whether the accused is permitted to turn an accusation against the accuser.

Question I

GRATIAN. That restoration is to be given to any persons whatsoever is proved by many authorities. For Pope Gaius says, [sole letter to Bishop Felix, c. 3]:

C. I. All things are to be restored to bishops who have been despoiled or cast out.

To bishops despoiled of their property or cast out of their own sees, all things which were taken from them are to be restored under the laws, because no crime can be alleged against them before this has been done.

C. II. Concerning the same.

Likewise Pope Fabian, [letter II to the Eastern Bishops]. If bishops have been expelled from their own sees or churches without the authority of the Roman Pontiff, their own place and all their things are to be restored before they are summoned to a synod. For no reason permits anything to be alleged against them while their goods, or those of their church, and their property are held for a time by rivals or by any persons whatsoever. Nor can anyone among greater or lesser persons allege anything against them while they lack their churches, property, or powers.

GRATIAN. But it is to be noted that a sentence of restoration alone does not suffice unless all things are restored actually by the office of the judge, so that one who has been cast out or despoiled may also receive natural possession, whether by his own intent and another's body, as through a procurator, or by his own intent and body. All things which had been taken from him under whatever condition are also to be brought back to the same place from which they had been carried away. Hence John, Bishop of the city of Rome, writes to Archbishop Zacharias, [letter I]:

C. III. Concerning the same.

All things are to be restored actually, by the ordinance of pontiffs, to bishops who have been despoiled or cast out, and are to be brought back entirely to the place from which they had departed, under whatever condition of time, captivity, deceit, or violence of evil persons, and through whatever unjust causes they are known to have lost the property of the church or their own property, that is, their own substances.

C. IV. Concerning the same.

Likewise Eusebius, Bishop of the Apostolic See, to all bishops. All things are to be restored to bishops who have been despoiled or cast out, etc., as far as "are to be brought back entirely," in the same manner as above.

C. V. One who withdraws himself from the service of his brothers is not a priest but a schismatic.

Likewise Pope Alexander, [letter II, at the beginning]. No one doubts that the good are always persecuted and troubled by the evil. On this account, we ought to be humbled under the mighty hand of God, so that he may free us in the time of tribulation. For the devil does not cease to go about, seeking whom he may devour and seeking which of the faithful he may destroy, and especially those whom he has found more ardent in the service of the Savior and familiar with him. I call familiar those whom he wished to be consecrated and constituted in the order of the apostolate. For they intercede for the people and eat the sins of the people, because by their prayers and offerings they wipe away and consume them. And below: But anyone of your college who has withdrawn himself from your aid will be proved to be a schismatic rather than a priest. "Behold," says the Prophet, "how good and how pleasant it is for brothers to dwell as one." But those who withdraw themselves from the assistance of their brothers do not dwell as one, or, what is worse, those who lay ambushes or snares for their brothers. And below: Those who persecute the Lord in his priests crucify him, because *cross* is named from torment. But one who suffers violence sustains great torment.

C. VI. Let those who inflict reproach and calumny upon priests be excommunicated.

Likewise Pope Fabian, [letter II to the Eastern Bishops]. Therefore, brothers, God foreordained you and all who perform the highest priesthood for this purpose: that you remove injustices, cut off presumptions, assist those laboring in the priesthood, and give no place to their reproaches and calamities, but bear aid to the one who suffers calumny or reproach; and cut off the one who commits calumny or reproach, and bear assistance to the Lord in his priests.

GRATIAN. It is evident, therefore, that the despoiled are first to be actually restored before they are summoned to a case. But it is objected: where there was no lawful institution, there cannot be restoration. For one who was never established is not proved to have been removed, and therefore he cannot demand restoration. Therefore, those whose election is vitiated, who were not elected by the clergy or sought by the people, or who crept in through simony are not to be held among bishops; and therefore, if they have been expelled from the sees which they appeared to hold, they cannot seek restoration before they are summoned to a case. Hence above in the tract concerning persons to be ordained: "If anyone by money or human favor, or by a popular or military tumult, etc." But this is understood only in the case in which the Apostolic See is occupied through violence, in which case no judge is found by whose office that apostate can be excluded. But it has no place in other cases, since violent possession cannot be taken away from a violent possessor except by the sentence of a judge. But if the true lord, by war not continued but renewed, has cast him out of possession by force, he will, by authority of the judge, restore possession to the robber. Therefore, if bishops have been violently cast out from the sees which they appeared in any manner to hold, not by a judge, they are to be restored after the expulsion before a regular summons to a synod.

Question II

GRATIAN. Part I. Concerning periods of delay to be furnished after restoration, and for what space of time they are to be granted, Pope John writes, [letter I to Archbishop Zacharias], saying:

C. I. Periods of delay after restoration are granted according to the time of despoiling.

For as much time as they appeared to have been despoiled or expelled, the same space of time shall be granted them as a period of delay before they are summoned to a synod.

C. II. While the possessions or property of a bishop are detained, nothing can be alleged against him.

Likewise Pope Pelagius II, [to the Bishops of Italy]. When the churches, possessions, or property of some bishop are detained by his rivals or by any others not of his own will, nothing ought or can be alleged against him by anyone before the restoration of all his property. Rather, all things are first to be restored to him under the laws, and afterwards the appointed business is to be argued at the time defined by the Fathers.

C. III. Things violently taken away shall be restored before joinder of issue.

Likewise Stephen V to Gerard of Lodi. You ought first to cause yourselves to be reinvested with the invaded cities, monasteries, and manors, as well as all the other property generally, because we ought neither to contend naked nor to oppose ourselves unarmed to enemies.

C. IV. Those who have invaded the places of expelled persons with adulterous foulness shall be cast out from the clergy and become infamous.

Likewise Pope Evaristus, [letter II]. We have heard that certain bishops defamed and torn to pieces by you have been driven from their own cities—for bishops cannot be constituted elsewhere except in cities that are not very small—and that others have been constituted while they are living. Therefore we write these things to you so that you may know that this is not lawful; rather, their proper bishops ought to be recalled and restored most completely. But those who with adulterous foulness hold their brides—whom, according to the foregoing tenor, we understand to be their wives—we command to be cast out, to be made adulterers and infamous, and to be barred from ecclesiastical honors. But if you have any complaint against them, after these things have been completed it will have to be investigated and terminated by authority of this holy See.

C. V. Periods of delay of six months are furnished to persons cast out or despoiled.

Likewise Gaius, [letter I to Felix]. After complete restoration, an annual period of delay or one of six months is to be granted to persons cast out or despoiled.

C. VI. Periods of delay are to be furnished after restoration.

Likewise Pope Eusebius, [letter II]. Therefore it is first necessary that all things be restored under the laws to the despoiled, and that the churches taken from them be restored to them with every privilege; and afterwards a space shall be granted them not under a narrow time but for as long as they appeared to have been despoiled or expelled before they are summoned to a synod.

C. VII. Concerning the same.

Likewise Pope Felix II, [in the rescript to the Bishops of Egypt, c. 8]. Let him reside peacefully and with power in his own see, arranging all acts, for as long as he appeared, while expelled or despoiled, to have lacked his property.

C. VIII. No one ought to be summoned to a case before restoration.

The same, [Pope Felix I, letter II to the Bishops of Gaul]. If a bishop has been despoiled of his own property or that of the church committed to him, or—which God forbid and ought to be alien to all the faithful—has been cast out from his own see, or has been separated from his sheep in some detention, then canonically let him first be restored to his former status with every privilege of his honor, and let all his things which had been taken from him through the ambushes of his enemies be restored under the laws. For he will not be able to be summoned or prejudged unless, for his own necessity—though by no means to be judged—he has voluntarily chosen to come. Therefore, let him by no means be compelled by anyone before all things which he had lost through the suggestions of

his enemies are most completely restored to his power by an honorable council in lawful order. § 1. But let the prelate be returned to his former status with every honor; and, after he has freely and securely arranged and ordered his affairs for a long time, then, when regularly summoned, let him come to the case at the appointed time in a lawful and canonical council within four, five, six, or seven months, according as his capacity permits, and not before; and, if it thus appears just, let him answer the allegations of the accusers.

GRATIAN. Part II. But if a bishop, by living badly, has dissipated the resources of the church, he is to be removed from its patrimony until cognizance is taken concerning the dissipation of ecclesiastical property, after the example of tutors and curators who, when they are suspect, are removed from a tutorship or curatorship until cognizance is taken concerning the suspicion. Hence Pope Pelagius to Peter the priest:

C. IX. One who by living badly dissipates the property of the church shall be removed from administration.

Because those things which have reached our ears concerning the frauds of Maximilian through the lamentable report of petitioners could not readily be known according to the truth unless the resources of the church—which he dissipated by badly converting them to his own uses—were set apart from his power until the case is heard, we therefore wish you in the meantime to remove him from the patrimony of the aforesaid church and to have the periods for its examination kept within your governance.

Question III

GRATIAN. Part I. That periods of delay are not to be denied after summons to one coming to judgment is attested by the same Pope Felix II, [in the letter to the brothers of Egypt, c. 8], who says:

C. I. Periods of delay shall not be denied to one coming to judgment.

When the accused has come to judgment, if he wishes, the periods of delay established by the Fathers shall be granted without impediment to him when he requests them, and judges chosen by him shall be assigned to him.

C. II. Periods of delay of how many months are to be furnished to bishops.

Likewise from the letter of Felix II to the brothers of Egypt, [c. 20]. Concerning periods of delay for bishops, about which you consulted us, we find diverse rules instituted by the Fathers. For certain Fathers commanded that a year and six months be granted for repelling the devices of assailants, preparing their responses, confirming witnesses, and seeking the counsel of bishops and friends. Others commanded a year, in which very many agree. But I have not found less than six months, because these have been granted even to laymen; how much more to the Lord's priests? And below: § 1. Periods of delay are to be granted not under a narrow time but over a long space, so that the accused may be able to prepare themselves, meet all communicants situated in the provinces, prepare witnesses, and arm themselves fully against ambushers.

C. III. Concerning periods of delay to be furnished.

Likewise Pope Eleutherius, [in the letter to the provinces of Gaul]. Periods of delay that are not small are to be given for making inquiry, lest anything appear to be done prematurely by either party, because many things happen through surreption.

[PALEA.

C. IV. Concerning the same.

Likewise Pope Damasus, letter III to Archbishop Stephen. Periods of delay of six months, or longer if necessary, are to be granted to accused persons in criminal cases.]

GRATIAN. Part II. But the span of delays, as is found in book III of the Code under title 11, *On Delays*, is to be moderated on this basis: if either a person or instruments are requested from the same province in which the litigation is conducted, not more than three months shall be granted. But if they are requested from adjoining provinces, justice requires six months to be observed. In a transmarine delay, however, nine months will have to be computed. Judges, however, shall understand that by this rule there has not been granted to them a discretion for giving delay. Rather, they shall know that the same delay—if a most urgent basis in the matters has demanded it and the necessity of the desired instruction has required it—is not easily to be granted more than once, nor by any artifice for protraction.

§ 1. But a delay is to be entirely denied to one who has brought back a rescript to an extraordinary judge. It is to be given, however, to the person summoned to judgment for proving falsehoods in the petitions or producing some instruments or witnesses, because one who is drawn contrary to expectation before an alien judgment could not have been prepared. § 2. But when a rescript has been made by the prince concerning an appeal or consultation, whether a delay was requested in the first judgment and not granted or was not even requested, it will not be lawful to give it to anyone, on the same basis by which delay is not customarily granted in judgments of imperial cognizance. It is not proper to request a delay from a judge while he is proceeding, even if it be granted with both parties present, since it can be granted only after the cause has been heard, and the hearing of the cause is lawfully assembled not by a full formal challenge but rather while the judge is sitting, so that, if perhaps the petition for delay has been rejected, the question undertaken may be decided by the judge's sentence.

From the seventh Novel Constitution, in collation VIII. § 4. But the plaintiff shall direct the petition only after he first furnishes security, both to the person whom he says is bound and to the executor of the business, that he will either join issue within two months or restore every loss befalling the person who is brought to trial. In collation V: GRATIAN. Part III. § 5. Let the petition be offered to the person summoned to judgment, and thereafter, after the *sportulae* have been furnished and surety given, let him enjoy a delay of twenty days, in which he may deliberate whether to yield or contend, to request that another be joined to the judge, or to reject that judge, unless the latter is the judge whom he himself requested after already rejecting another. Finally, let him be asked in person whether this time has passed. This shall be made manifest not only by his own response but also by his subscription of the petition, which he ought to make at the beginning. Therefore, joinder of issue conducted contrary to this grant is held as nothing.

From Novel Constitution VI, in collation VI. § 6. This ought not to be done unless the plaintiff has given sufficient security, promising that he will give a fixed amount if he does not pursue the case, or, pursuing it, does not win the case. Therefore, if after the prescribed time he does not appear within ten days while the defendant is present, let the defendant be dismissed after exacting what was promised and whatever more he swears, subject to the judge's assessment, that he spent concerning the litigation. [§ 7. An exception concerning the forum is dilatory and therefore ought to be opposed and proved at the beginning of the litigation. But it is sufficient that peremptory exceptions, such as prescriptions of a long period, be pleaded at the beginning of the litigation.]

Question IV

GRATIAN. That infamous persons and those not lawfully joined ought not to be admitted to accusation, and what persons are generally to be removed from accusation, is clear from the authorities of many. For Pope Hyginus says, [letter II]:

C. I. Infamous persons cannot accuse those who are of good reputation.

We cannot receive a person who follows the association of an alien error, or departs from the path of his own purpose, or is disobedient to the commands of the Apostolic See; nor do we permit them to impede those believing rightly or obeying the commands of the holy Fathers, because there ought to be a great distinction between the faithful and the unfaithful.

C. II. One who voluntarily transgresses his own law cannot accuse those acting rightly before his return.

Likewise Anacletus in the first decretal. Our blessed predecessor Clement, an apostolic man and full of the Spirit of God, established together with his other holy colleagues, saying: License to accuse or testify shall be denied to those who have neglected the dignity of the Christian religion and name, the norm of their own law or purpose, or things regularly prohibited. For voluntary transgressors of their own law, and its violators, are called apostates. Every apostate is to be rejected before his return, and he is not to be received into an accusation or testimony against those acting rightly.

C. III. Those departing from their purpose become infamous.

Likewise Pope Pius, [letter I]. If anyone has strayed backward from his purpose and willingly transgressed the commands of the Apostolic See, he becomes infamous. Therefore, the refutations of those who are suspect in the right faith ought to be rejected. But faith and manner of life are first to be scrutinized, and afterwards those who have appeared irreproachable are to be received, and not before.

C. IV. Incestuous persons not lawfully joined cannot accuse priests or lawfully joined persons.

Likewise Pope Callistus, [to the Bishops of Gaul, letter II, c. 4]. Unions of blood relatives are neither lawful nor able to remain, but are to be repelled. § 1. Therefore, whoever is shown to be joined unlawfully, or coupled without a dotal title and the blessing of a priest, can by no means charge priests or lawfully joined persons with a crime or testify against them, because everyone polluted by the stain of incest is infamous and is not permitted to accuse the aforesaid persons. Therefore, not

only are these persons to be repelled and made infamous, but also all those consenting to them. § 2. We determine that the same shall be done concerning abductors or those who assail their elders. For the laws of the world kill these persons, but we, with mercy going before, receive them to penance under the mark of infamy.

C. V. Who are not to be received in an accusation.

The same, [in the same letter]. Conspirators are to be received in no person's accusation, nor can their voice, or that of anathematized persons, harm or injure anyone.

C. VI. Concerning the same.

Likewise Pope Stephen, [letter II]. Let none of the anathematized be received, nor let the things which are said or written by them be believed by anyone. I call those persons anathematized whom bishops have anathematized by their writings, or whom their statutes anathematize.

C. VII. Anathematized persons cannot accuse the faithful.

Likewise Pope Fabian, [letter I to the ministers of the Church]. We remove all whom the statutes of the holy Fathers anathematize in past as well as future times, and we exclude them from every accusation of the faithful.

C. VIII. A cleric who has accused a bishop becomes infamous.

Likewise Pope Stephen, [letter II, c. 8]. But a cleric who has accused his bishop or proved to be an ambusher against him is not to be received, because he has become infamous and ought to withdraw from his grade and be handed over to serve the curia.

C. IX. Those who persecute bishops shall become infamous and exiles.

Likewise Pope Alexander, [letter I, c. 1]. Those who persecute bishops and unjustly strive to remove them contrary to apostolic authority, although they are kept from death by the Lord's saying, "I do not wish the death of the sinner, but that he be converted and live," are nevertheless without doubt marked with perpetual infamy and judged worthy of exile nearby. Concerning them we hold from the times of the Apostles and below, and we possess decrees: we obstruct the plea of accusing bishops or testifying against them for those whom we know to be dead not by human but by divine acts.

C. X. Detractors and instigators of enemies shall not accuse bishops.

Likewise Pope Zephyrinus, [letter I to the Bishops of Sicily]. We remove from an episcopal accusation or testimony detractors, who are to be eradicated by divine authority, and instigators of enemies.

C. XI. An infamous or sacrilegious person cannot accuse a religious Christian.

Likewise Pope Eutychian, [letter II to the Bishops of Sicily]. Let it never be lawful for any infamous or sacrilegious person, concerning any business whatsoever, to give testimony against a religious Christian—even if he is a humble and servile person—or for any reason or by formal inscription to assail a Christian. GRATIAN. It is to be noted, however, that excommunication is one thing and anathematization another. Hence John VIII writes to a certain bishop:

C. XII. Excommunication is one thing, anathematization another.

Know that Engeltrude, wife of Boso, was struck repeatedly not only with excommunication, which separates from fraternal fellowship, but also with anathema, which cuts one off from the body of Christ itself, which is the Church. GRATIAN. From this it is given to be understood that the anathematized are to be understood not simply as entirely separated from fraternal fellowship, but from the body of Christ, which is the Church.

Question V

GRATIAN. That witnesses are not to be produced from the household of accusers, and that the plea of enemies is not to be heard, is shown by many authorities. For Pope Callistus says, [letter II to the Bishops of Gaul]:

C. I. Blood relatives or familiars shall not give testimony against strangers.

Blood relatives who are accusers shall not give testimony against strangers, nor shall familiars or persons coming from their household; but, if they wish and mutually consent, relatives may testify among themselves, and not against others.

C. II. Those who were recently enemies cannot be accusers or witnesses.

Likewise Pope Anacletus, [letter III, c. 5]. Those who were enemies before yesterday or the day before yesterday cannot be accusers and witnesses, lest, being angry, they desire to harm, or, having been injured, wish to avenge themselves. Therefore, an unoffended and unsuspected disposition of accusers and witnesses is to be sought.

C. III. Concerning the same.

Likewise Pope Symmachus, [in the Fifth Roman Synod held under him]. Let no credence be given to accusers who are enemies, who come from the household of an enemy, who dwell with enemies, or who are suspect, lest, being angry, they desire to harm, or, having been injured, wish to avenge themselves. § 1. If anyone has attempted to infringe those things which have today been prohibited in this holy synod, or presumed voluntarily to transgress them, if he is a cleric, let him be entirely deprived of his own grade; but if he has been a monk or layman, let him be deprived of communion, and, if he has not amended the vice, let him be struck with anathema. But if anyone has brought to ecclesiastical notice secret or manifest ambushes laid by any persons against pontiffs, or the matters which the sentence of this holy synod embraces, let him obtain honor; and let those who devise adversities against them, as was long ago established by the holy Fathers and is today confirmed by synodal and apostolic authority, be entirely cast out and handed over to perpetual exile with all their things taken away.

C. IV. Who cannot be accusers or witnesses.

Likewise Pontianus, Bishop of the holy and universal Church, [letter II to all Christians]. Our predecessors the Apostles prohibited suspect persons, enemies, persons readily engaging in litigation, those who are not of good manner of life, those whose life is open to accusation, and those

who neither hold nor teach the right faith from being accusers and witnesses. We remove them by the Apostles' authority and exclude them for future times.

C. V. Those whom the laws of the world do not admit shall be repelled from accusations of clerics.

Likewise Eusebius to the Bishops of Gaul, [letter I]. Concerning accusations of clerics, about which you commanded, know that it has been observed in this holy City from the time of the Apostles that accusers and accusations which the laws of foreign customs do not adopt are removed from the accusation of clerics. And below: Therefore, following the footsteps of the Fathers for the salvation of God's servants, we also remove the license to assail another from all persons whom the public laws do not admit to an accusation, and let no accusations be heard by ecclesiastical judges which are prohibited by the laws of the world.

C. VI. Foreigners, and those whom the divine declarations call dead, cannot accuse bishops.

Likewise Pope Pelagius II, [to the Bishops of Italy]. Following and strengthening the canonical statutes of the holy Fathers, we entirely remove from every accusation of bishops all infamous persons, all suspect persons or enemies, those who are not of the same nation, those whose faith, life, and freedom are unknown, those who are not of good manner of life, and those whose life is open to accusation. We likewise judge that all whom the divine laws call dead are to be removed from the same accusation and subjected to public penance.

C. VII. Accusations which the laws of the world do not adopt are repelled from clerics.

Likewise from the Roman Synod held under Pope Hadrian. We determine that accusations and accusers and their business which the secular laws do not adopt are to be entirely repelled from clerics by divine and synodal authority, because it is unworthy for superiors to suffer from inferiors things which inferiors disdain to suffer from them.

C. VIII. Neither a slave, a freedman, nor an infamous person shall presume to accuse bishops.

Likewise Stephen, Bishop of the Roman Church, to all Bishops, [letter II, *On Accusations of Priests*, c. 3]. Accusers and accusations which the laws of the world do not admit, and which our predecessors prohibited, we also remove. Let no foreigner become either their accuser or their judge. Hence it is written concerning Lot: "You entered as a stranger; surely not so that you may judge?" Let no slave or freedman be an accuser of our bishops, nor any suspect or infamous person.

C. IX. Infamous persons who have recourse to sorcerers and diviners can be neither accusers nor witnesses.

Likewise Pope Eusebius, [letter III to the Bishops of Tuscany]. We establish, together with all the bishops who are with us, that homicides, thieves, practitioners of magic, sacrilegious persons, abductors, adulterers, incestuous persons, poisoners, suspect persons, criminals, members of the household, perjurers, those who committed abduction, those who gave false testimony, those who had recourse to sorcerers and diviners, and persons similar to them shall by no means be admitted to

an accusation or testimony, because they are infamous and are justly to be repelled, since their voice is deadly.

C. X. Suspect or favored persons shall not be admitted to an accusation.

Likewise Pope Julius, [in the rescript to the Easterners, c. 33]. It was similarly decreed in the aforesaid synod that suspect, infamous, criminal, favored, calumniating, related, wicked, or readily litigious persons shall not be received as accusers, but only such as are free from every suspicion.

C. XI. One who devotes himself to enmities and readily litigates can be neither an accuser nor a witness.

Likewise Pope Felix II, [letter I, c. 14]. Let no slave, freedman, unfaithful person, person entangled in crimes, calumniator, one who devotes himself to enmities, one who frequently litigates and is ready to accuse or detract, or infamous person—and, indeed, let none of all those whom the public laws do not admit to accuse public crimes—be permitted to accuse bishops.

C. XII. Members of a household, suspect persons, and those coming from the household shall not be received in an accusation.

Likewise Pope Callistus, [letter II to the Bishops of Gaul]. Suspect accusers or witnesses shall not be received, nor members of the household or those coming from the household; nor shall blood relatives of the accuser give testimony against strangers, because the affection arising from kinship, familiarity, and lordship is accustomed to impede the truth. Carnal love, fear, and avarice very often dull human senses and pervert judgments, so that people think gain to be piety, and money to be, as it were, the reward of prudence.

C. XIII. Those who are enemies or suspect, and those who pursue any persons with hatred, shall be removed from an accusation.

Likewise Gelasius, [Pope II, letter VIII, c. 4]. We judge all who take up arms against the Fathers to be infamous as assailants of the Fathers. Therefore, the authors or perpetrators of these vices are not to be received in the accusation of pontiffs, but are to be entirely repelled, because the canonical decrees of the Fathers command that the accusation or testimony of those who pursue any persons with hatred, or who are regarded as enemies or suspect, shall in no way be received.

[PALEA.

C. XIV. Concerning the same.

Likewise Pope Paschal: Let none of the bishops be permitted to repel from an accusation against himself those whom, before he was assailed by them, he neglected to separate from his common familiarity.] GRATIAN. But enemies are prohibited from an accusation because innocence is frequently oppressed by their cunning.

But when Athanasius is commanded to be restored to his see because he complained of the enmity of his patriarch toward him, it is evident that, even if someone's crimes are manifest, he is nevertheless not to be condemned upon an enemy's accusation. Hence Nicholas writes to Emperor Michael, [in the letter which begins, “We had proposed”]:

C. XV. Those who are enemies cannot be judges.

Both reason itself dictates and very many examples prove that suspect persons and enemies ought not to be judges. § 1. For what more welcome and pleasing thing can anyone give to an enemy than if he entrusts to him for assailing a person whom perhaps he has wished to harm? The Synod of Constantinople is known providently to prohibit this in the sixth chapter of its canons. § 2. Let us also come to the holy Synod of Chalcedon and hear what it relates to us concerning Athanasius, bishop of Perrha. For that prelate, having been summoned a third time and not appearing, had been canonically condemned by his patriarch; but solely because, when he was summoned to the synod, he cried out that the very person who was judging was his enemy, he was reserved by the holy Synod of Chalcedon for an examination of the charges brought against him, and it was adjudged that he should receive his own church unless he were convicted anew. If Athanasius, deposed by his patriarch, because he complained of the latter's enmity, is sent back for the judgment to be renewed and, even if manifest crimes weigh against him, is commanded to be restored to his church, how much more ought Ignatius—who was deposed not by a patriarch but was himself the patriarch—not to have been deprived of his own church and despoiled by the decisions of hostile and suspect judges? § 3. Let our most eloquent Pope Gelasius also come, the most valiant vanquisher of heretics, and let him explain to us now as well what he said concerning the bishops of Constantinople who were then ailing in their customary manner. "I ask," he says, "where can the judgment which they put forward be conducted? Is it before those very persons, so that the same men are enemies, witnesses, and judges? But not even human affairs ought to be entrusted to such a judgment." But if even human judgments ought not to be entrusted to a judgment in which the same enemies are the judges, how much less divine affairs, that is, ecclesiastical ones? Let one who is wise understand. § 4. And truly, for this reason the pious Emperor Justinian is known to have promulgated in his laws, saying: "Let one who thinks a judge suspect to him be permitted, before the suit is begun, to challenge him, so that recourse may be had to another." For it is in a certain manner natural to avoid the snares of suspect judges and to wish to flee the judgment of enemies. § 5. For this reason Saint John Chrysostom refused to enter the assembly of the council gathered against him. GRATIAN. It is evident that, even if someone's crimes are manifest, he is nevertheless not to be condemned upon an enemy's accusation.

Question VI

GRATIAN. Part I. A defendant, however, is by no means to be produced outside the province. Hence Pope Fabian writes to Bishop Hilary, [letter III, c. 4]:

C. I. Where a crime is committed, there the case shall be argued.

Let a case always be conducted where the crime is committed, and let one who has not proved what he charges suffer the penalty which he sought to impose.

C. II. An accused person shall be heard only in his own forum.

The same, [in the same letter, c. 2]. If any one of the bishops is accused concerning certain crimes, let him be heard by all the bishops who are in his province, because an accused person ought not to be heard anywhere other than in his own forum. GRATIAN. An exception concerning forum is dilatory, and therefore it ought to be pleaded and proved at the beginning of the suit. It is sufficient, however,

that peremptory exceptions—as are prescriptions of long time—be formally pleaded at the beginning of the suit.

C. III. Concerning the same.

The same, [Fabian in the same place]. Let one who is impleaded plead his case before his own judge; one impleaded before a judge who is not his own may, if he wishes, remain silent. But whenever those impleaded have appealed, let delays be granted them. GRATIAN. What has been said concerning place is to be understood when the truth of the case can be discovered only in the place where the crime was committed, or unless either party has invoked the judgment of a greater person, whether by declining the judgment or by seeking relief from the sentence. Hence Stephen, Bishop of the holy, apostolic, and universal Roman Church, writes to all Bishops, [letter II, c. 7]:

C. IV. A case is to be heard within the province and only by the coprovincials.

Let the license to accuse not extend beyond the boundaries of the provinces, but let every accusation be heard within the province and concluded by the coprovincials, unless an appeal has been made to the apostolic see.

C. V. One accused or judged by the coprovincials shall appeal to the apostolic see.

Likewise Pope Sixtus, [letter I to Bishop Gratus]. A bishop accused or judged by the coprovincials in any case may freely appeal and approach the Pontiff of the apostolic see, who shall take care to review his business either personally or through his vicars. And while the Pontiff conducts his case in a repeated judgment, another bishop shall not be placed or ordained in his place, because, although the coprovincial bishops are permitted to investigate the case of an accused bishop, they are nevertheless not permitted to determine it without consulting the Roman Pontiff.

[PALEA.

C. VI. Concerning the same.

Likewise Pope Damasus to Archbishop Stephen, letter II, c. 2. A metropolitan, together with all his coprovincials, so that none of them is absent and all agree in the business of each one, is permitted to examine bishops and the highest causes of ecclesiastical business; but he is by no means permitted to determine their chief complaints and those of ecclesiastical causes, or to condemn bishops, without the authority of this holy see, to which all ought to appeal if necessary and by whose aid they ought to be supported.]

C. VII. Coprovincials and metropolitans can hear the case of bishops, but cannot determine it.

Likewise Pope Eleutherius, [writing to the provinces of Gaul, c. 2]. Although accusations or criminal charges against bishops may be argued before provincials, metropolitans, and primates, they nevertheless may not be determined without the authority of this holy see, as has already been determined by the Apostles and their successors with the consent of many bishops. Nor shall others be set over or ordained in their churches before their business is justly concluded here. But the cases

of the remaining clerics may both be argued and justly concluded before coprovincials, metropolitans, and primates.

C. VIII. A definitive sentence is not to be rendered in the cases of bishops before apostolic censure.

Likewise Leo, Bishop of the city of Rome, to Anastasius, Bishop of Thessalonica, [letter LXXXII, otherwise LXXXIV, c. 1]. I am greatly astonished, dearest brother, but grieve much more, that you could have been moved so atrociously and so violently against one concerning whom you had judged nothing more than that, after being summoned, he delayed appearing and offered sickness as an excuse, especially since, even if he deserved something of this sort, you ought to have awaited what we would write back in response to your consultations. But even if he committed something grave and intolerable, our censure was to be awaited, so that you yourself would determine nothing before you learned what pleased us. For we entrusted our place to your charity in such a manner that you were called into a share of the solicitude, not into the fullness of the power. Hence, just as the things which have been piously attended to by you greatly gladden us, so the things which have been wrongly done grieve us exceedingly.

C. IX. Neither councils ought to be celebrated nor a bishop condemned without the knowledge of the Roman Pontiff.

Likewise Pope Julius to the Eastern Bishops, [letter I]. It was decreed long ago by the holy Apostles and their successors in the ancient statutes—which the holy and universal apostolic Church has maintained until now—that councils ought not to be celebrated or a bishop condemned without the sentence of the Roman Pontiff, because they willed the holy Roman Church to be the primate of all the churches; and just as blessed Peter the Apostle was the first of all the Apostles, so also, by the Lord's institution, let this Church consecrated in his name be the first and the head of the others, and let all the greater ecclesiastical cases and judgments of bishops recur to it as to a mother and summit, and take their end according to its sentence; nor ought anything concerning these matters to be decreed apart from the Roman Pontiff. Part II. GRATIAN. Sometimes many bishops are found to have been condemned without the Roman Pontiff being consulted and others substituted in their place, whose condemnation and substitution the Church is read to have tolerated by dispensation for the good of peace. Hence Pope Nicholas to Solomon, King of the Bretons:

C. X. For the sake of peace, the Church tolerated the deposition of certain persons made without the knowledge of the Roman Pontiff.

For this is the ordinance of God your Father, and this is the law of the Church your mother: namely, that you do not refuse to send all the bishops of your kingdom to the Archbishop of Tours or disdain to seek his judgment. For he is the metropolitan, and all the bishops of your kingdom are his suffragans, as the writings of my predecessors manifestly show. Those predecessors endeavored to rebuke your predecessors with a forceful invective because they had withdrawn those bishops from his care, although our own writings sent concerning this matter also do not appear to be lacking. And when a council has been celebrated before the designated prelate of the Church of Tours and the full number of colleagues, that is, twelve bishops, and the expelled bishops have been examined according to rule, and it has appeared that they were canonically expelled, then, while they remain in their deposition, those who were consecrated in their places will certainly be able to possess the

honor of the episcopate. But if the expelled bishops have been declared innocent, let those who were substituted for them be removed, and let the former receive their churches. For my predecessors, the prelates, neither admitted nor approved the expulsions of those bishops who were driven from their churches, nor, while the former were alive, did they call those substituted for them legitimate bishops. If, however, you perhaps disdain to send the aforesaid bishops to the Archbishop of Tours, take care to transmit two of the expelled bishops and two of those substituted, together with a legate of your church, to the apostolic see of blessed Peter, where, after a fitting examination has first been made, it may appear who are the legitimate bishops, so that they do not irregularly lose their churches. For I am able to determine nothing else in the present business. But because there is great contention among the Bretons about who is the metropolitan, although no one's memory holds that you have had any metropolitan church in your region, nevertheless, if you wish, after almighty God establishes peace between you and our beloved son, the glorious King Charles, you will easily be able to attend to this. But if you believe that you must proceed more contentiously, endeavor to send to our apostolate, so that by our weighing it may become clearer than light which church among you was anciently the archiepiscopal one, and thereafter, all ambiguity having been cut away, your bishops may know without hesitation whom they ought to follow. For it is not necessary that the churches of the Lord suffer any losses of division through the discords of kings, since, insofar as it lies with them, they strive to preserve among themselves and toward all the peace which they preach. Part III. GRATIAN. Otherwise, however, the sentence of the bishops will be void and is to be reviewed by a synod. Hence Pope Felix, [letter I to Paternus]:

C. XI. An unjust condemnation is void and is to be reviewed in a synod.

We judge a condemnation by bishops that is unjust to be void and for that reason to be reviewed by a synod, so that those oppressed may be aided by all in every case. GRATIAN. But Pope Sixtus III attests, [in the letter to the Eastern Bishops, c. 3], that no one is permitted to contemn his metropolitan and seek the judgment of others, saying:

C. XII. Foreign judgments are to be removed.

With apostolic authority preserved in all matters, we prohibit foreign judgments by a general sanction, because it is unworthy that those who ought to have coprovincials and judges chosen by themselves should be judged by outsiders.

C. XIII. Concerning the same.

Likewise Anacletus, [Pope, letter I, c. 3]. We confirm the laws of the Church by apostolic authority and remove foreign judgments. Hence also the Lord, making mention of Lot, speaks through Moses, saying: “You entered indeed as a stranger; surely not so that you might judge?”

C. XIV. Let no one be permitted to seek the judgment of other provinces.

Likewise Innocent, [Pope, to Victricius, Bishop of Rouen, letter II, c. 3]. Without prejudice, however, to the Roman Church, to which reverence is owed in all cases, let no one be permitted, after abandoning those priests who by divine direction govern the churches of God in the same province, to fly to other provinces, or to seek or submit to the judgments of the bishops of other provinces. But if anyone has presumed to do so, let him be removed from clerical office and judged by all to be guilty

of injury. GRATIAN. The reverence which is owed to the apostolic Church and its authority are to be understood when either an appeal has been made to it or judges chosen by it are granted. Hence Pope Sixtus, after saying, "They ought to have coprovincials and judges chosen by themselves," immediately adds, "unless an appeal has been made."

C. XV. Without a decree of the apostolic see, we cannot approach outside judges.

Likewise Anacletus, [Pope, letter I, c. 3]. Every province, according both to ecclesiastical laws and to the laws of the world, ought to have its own just and not unjust judges, and not outsiders, unless the authority of this apostolic see has decreed it.

C. XVI. Upon the appeal of another province, one ought not to approach judges of that province.

Likewise from the Roman Synod. No one ought to be produced from province to province or from county to county except upon the report of the judge, so that the plaintiff follows the defendant's forum. And below: § 1. Let the synod of that province administer those matters which arise throughout each province, as is established to have been decreed in the Council of Nicaea. § 2. Let the license to accuse not extend beyond the boundaries of a province. Let every accusation be heard within the province and concluded by the coprovincials.

[C. XVII.]

Likewise. If any cleric has been accused concerning any crimes, let him prosecute his actions in the province in which the person who is impleaded resides, and let his accuser not think that he is to be drawn to judgment elsewhere or farther away.

C. XVIII. Where a crime is committed, there the case shall be argued.

Likewise from a decree of Pope Hadrian. Let one who charges a crime know that he must prove it. Let the case indeed be conducted where the crime is committed.

Question VII

GRATIAN. Part I. That one whom an equal or greater stain with the defendant infects cannot be a judge is proved by many authorities. For the holy Roman Synod says:

C. I. Infamous persons cannot be judges.

An infamous person can be neither a procurator nor a cognitor. GRATIAN. There are three things by which some persons are impeded from becoming judges. By nature: a deaf person, a mute, one permanently insane, and a minor below puberty, because they lack judgment. By law: one who has been removed from the senate. By custom: women and slaves, not because they do not have judgment, but because it has been received as custom that they do not discharge civil offices. Yet if a slave, while he was thought to be free, rendered a sentence by delegation, although he was afterward reduced to slavery, the sentence rendered by him possesses the firmness of a matter adjudged.

[C. II.] In the Digest, under the title *On Pleading*.

Infamous persons cannot be procurators or advocates in cases. There are three classes of those who are prohibited from pleading. § 1. To plead is to set forth one's own desire or that of one's friend before the person who presides over the jurisdiction, or to oppose the desire of another. § 2. As we stated before, there are three classes of those who do not plead. Certain persons are prohibited from pleading altogether, either on account of age, as those less than seventeen years old, or on account of an accident, as a deaf person who does not hear at all. Others are prohibited from pleading for other persons, either on account of sex, as women, or on account of an accident, as those deprived of both eyes, or on account of a mark of turpitude, as those who have submitted to the part of a woman with their body, unless perhaps they are proved to have been violated by force by robbers or enemies. Similarly, those who have been condemned for a capital crime or for calumny in a public judgment, or who hired out their services to fight with beasts in the arena, are prohibited from pleading for others. These persons are permitted to argue for themselves and prohibited from doing so for another, unless perhaps they administer a guardianship of minors below puberty or a curatorship of adolescents that was not sought but was necessary. For they are permitted to plead for those whose care they bear. All other persons who are marked as infamous can plead only for themselves and for certain persons, unless they have received restitution in full. § 3. They are permitted to plead for a parent; for a patron or patroness; for the children and parents of a patron and patroness; also for their own children, a brother, a sister, a father-in-law, a mother-in-law, a son-in-law, a daughter-in-law, a stepfather, a stepmother, a stepson, a stepdaughter, a male ward, a female ward, an insane man, an insane woman, a simple-minded man, a simple-minded woman, a deaf person, a spendthrift, and an adolescent. § 4. Likewise, for those to whom curators are customarily given on account of infirmity and who, because of some permanent disease, cannot attend to their own business. § 5. But all who discharge an office not voluntarily but necessarily can plead without offense, even if they are among those who are permitted to plead only for themselves. § 6. By affinities, however, we ought to understand not those which once existed, but those presently existing. § 7. Under the designation of daughter-in-law and son-in-law are also included father-in-law and mother-in-law and those more remote, for whom the prefix "great-" is customarily added.

Part II. § 8. Those who, under the name of honoraria, are found demanding for themselves as compensation a fixed share of the very suits they have undertaken to defend, with grave loss to the litigant and plundering of him, are also excluded from the profession of advocates, as is found in book II of the Code, under the title *On Pleading*. § 9. Likewise, if anyone has been so insolent that he thinks the contest is to be conducted not by reason but by insults, he will suffer diminution of his reputation. § 10. Furthermore, an advocate is not permitted to enter any contract or make any compact with the litigant whom he has received under his own protection, nor deliberately to prolong the dispute. § 11. At the city of Rome, even men of honored rank who have thought this ought to be chosen may plead as long as they wish, provided, namely, that this occasion is not seized for shameful profit and a dishonorable stipend. For if they are captivated by gain and money, they will be numbered among the vilest as abject and degenerate men. § 12. But if in one court there have been only two, or more than the others, whose reputation is more distinguished, it shall belong to the office of the judge that an equal distribution of advocates be made and the assistance of each side be rendered equal. § 13. But if anyone, after being admonished by the judge, has denied his advocacy to either party on an excuse which cannot be proved, let him be barred from the forum; and let him

know that the opportunity to act can never be restored to him. § 14. But if any litigant has been discovered to have consulted separately with several advocates and to have taken from his adversary the opportunity of equal defense, he will show beyond doubt that an unjust suit is being fostered by him, and he will experience that the judicial authority has been mocked by him. § 15. Likewise, although those who have conducted a case for the fisc are prohibited from providing advocacy against the fisc, nevertheless today they can provide advocacy for private persons even against the fisc, provided they decline to undertake the case which they handled while they were advocates of the fisc. § 16. Likewise, if you conducted a case against the father of a ward, after you have been appointed tutor or curator you are not prohibited from defending the same case. § 17. Cognitors are understood to act by office, not by choice. For it makes no difference whether one who undertakes an arbitration is of unimpaired reputation or ignominious. § 18. A son can also be an arbiter in his father's matter. For it is also held by very many that he can be a judge. § 19. But if anyone is a judge, he is prohibited from undertaking arbitration of the same matter in which he is judge and ordering that the compromise be made with himself; and if he has rendered a sentence, enforcement of the penalty is not to be granted. A slave cannot be an arbiter; a freedman can. § 20. Infamy, moreover, is imposed in many ways. Sometimes it is incurred by the kind of delict declared through a sentence, as when a judge pronounces: "You committed injury; you plundered an inheritance; you brought a calumnious accusation." Sometimes by the kind of punishment, as in the case of those who are condemned to public labor: they indeed retain their former status, but are also subjected to the penalty of infamy even after the time has been fulfilled. Sometimes by the kind of punishment and of delict declared through a sentence, as when, after someone has been beaten with clubs, it is said by the herald: "Thus to sycophants," that is, "to a calumniator." Sometimes by the very kind of deed, as in the case of those who practice wicked usury and unlawfully exact interest upon interest, and a woman who contracts marriage within the period in which it is customary to mourn a husband, and a man who knowingly married her. [GRATIAN.] Pope Felix attests the same, and in the same words. § 1. Likewise, in the Gospel the one who bears a beam in his eye is proved unable to draw out the speck from his brother's eye. § 2. Likewise David in the book of Psalms: "But to the sinner God said: Why do you recount my justices? etc." § 3. Likewise Gregory: "When a person's life is despised, it remains that his preaching be contemned."

C. III. Those who punish the vices of others shall take care first to correct their own.

The same in the *Moralia*, [book XIV, on Job, c. 15]. Part III. "Let the one among you who is without sin cast the first stone at her." For they were going to punish the sins of others and had left their own behind. Therefore, let them be called back inwardly to conscience, so that they first correct their own and then rebuke those of others. Hence it is that, when the tribe of Benjamin had been overwhelmed by a crime of the flesh, all Israel assembled and wished to avenge the iniquity, but nevertheless Israel itself was overthrown once and again in the contest of battle. For when the Lord was consulted whether they ought to go to avenge it, they were commanded to go; the people who proceeded according to the command of the divine voice lost once and a second time, and then at last, striking the sinful tribe very severely, almost entirely extinguished it. What does it mean that the people are inflamed in vengeance for a crime and yet are themselves overthrown first, except that those through whom the faults of others are struck must first be purified, so that those who hasten to correct the vices of others may themselves, now clean, come to vengeance?

C. IV. Let one judge the life of another who has nothing in himself that he must punish.

Likewise Ambrose upon "Blessed are the undefiled," [sermon XX, on the verse "Your mercies, O Lord"]. Let that person judge another's error who has nothing which he condemns in himself. Let that person judge who does not do the same things which he has thought ought to be punished in another, lest, when he judges another, he render sentence against himself. Let that person judge who is led to pronounce by no hatred, no offense, and no fickleness. And a little later: § 1. A good judge does nothing from his own discretion and from the purpose of his private will, but pronounces according to laws and rights, obeys the known rules of law, does not indulge his own will, brings forth from home nothing prepared and premeditated, but judges just as he hears and determines just as the nature of the matter stands; he complies with the laws, does not oppose them, examines the merits of the case, does not alter them. Learn, judges of the world, what disposition you ought to maintain in judging, what sobriety, what sincerity. And a little later: § 2. One who judges ought not to obey his own will, but to maintain what belongs to the laws. And a little later: § 3. In judging, the guardianship of truth is more dear to the heart than obedience to will.

C. V. One burdened by crimes is unable to judge those of another.

Likewise Gregory, [preface to Job, c. 3, otherwise 6]. When anyone is placed amid grave sins, while he is pressed down by his own, he does not wipe away those of another. § 1. For it is clear to all that, when the person sent to intercede is displeasing, the mind of the angry person is without doubt provoked to worse things. § 2. For it is written: "The sacrifices of the impious are abominable to God; the vows of the just are pleasing." For in the judgment of almighty God, not what is given, but by whom, is considered. § 3. Hence it is that it is written: "God had regard to Abel and to his gifts, but to Cain and his gifts he had no regard." For, about to say that the Lord had regard to the gifts, Scripture carefully prefaced that he had regard to Abel. From this it is plainly shown that the offerer did not please because of the gifts, but the gifts because of the offerer. § 4. "For the Most High does not approve the gifts of the iniquitous, nor does he regard their offerings, nor by the multitude of their sacrifices will he be propitiated for their sins." § 5. Likewise: "The Lord is far from the impious, and he will hear the prayers of the just."

C. VI. We ought first to correct ourselves, then our neighbors.

The same. When the Lord was asked to judge concerning the sinful woman, he did not immediately give judgment, but first, bending himself downward, wrote on the earth with his finger; and only then did he judge that which he was earnestly asked to judge. He was plainly instructing us in a figure that, when we behold any errors of our neighbors, we should not judge those errors beforehand by rebuking them until, having humbly returned to our own conscience, we carefully trace it with the finger of discernment and determine by examination what in it pleases the Creator and what displeases him, according to the statement of the Apostle: "Brothers, even if a man has been overtaken in some transgression, etc." § 1. "The one among you who is without sin": that is, first fulfill the justice of the law yourselves, and thus run with innocent hands to stone the guilty woman.

C. VII. Let a priest first cleanse his own sins, then those of others.

Likewise Augustine to a certain Count. Let a priest, as a wise and perfect physician, know first how to wash away his own sins and afterward to cleanse and heal those of others, and not to make them public. GRATIAN. Likewise, in the Gospel salt which has lost its savor is said to be useful for nothing except to be cast outside and trampled by men. From all these things it is given to be understood that a criminal cannot be the judge of another person's crime and condemns himself when he renders a sentence concerning another person's crime. § 1. But it is objected: when Saul had been rejected by the Lord, he judged the people of God, and the whole people sought his judgment. Likewise David, when he was an adulterer and homicide, upon being questioned by the prophet, rendered sentence against the rich man who carried off the poor man's sheep, saying: "The judgment of death is upon this man." Likewise Solomon, when through love of women he worshiped the gods of the gentiles, nevertheless the whole Israelite people flowed to his judgment. So too Ahab, although he worshiped Baal, nevertheless judged the ten tribes. Many others are also found both in the Old Testament and in the New whose life, although blasphemable, nevertheless had its sentence maintained because it proceeded from their office with the integrity of the judicial order preserved. Hence also the Lord says in the Gospel: "The scribes and Pharisees have sat upon the chair of Moses, etc." From this it is clearly established that evil pastors, when they strike the crimes of others with a sentence of just examination, harm themselves when they take care to correct others' vices without the example of their own amendment; but they benefit their subjects if, corrected by their rebuke or restrained by their sentence, the subjects have learned to change their life for the better. And by this fact, while they are tolerated by the Church, it is not permitted to evade their judgment.

Question VIII

GRATIAN. But Pope Zephyrinus attests that a bishop ought not to be heard or judged by one person alone, [letter I to the Bishops of Sicily], saying:

C. I. A bishop shall be heard and judged only by several persons.

Let accusers of bishops be free from every suspicion, because the Lord willed his columns to stand firmly, not to be shaken by just anyone. § 1. For let no sentence not spoken by his own judge bind any of them, because even the laws of the world command the same thing to be done. § 3. Let any accused bishop, if it is necessary, choose twelve judges by whom his case may be justly judged. Nor shall he be heard, excommunicated, or judged before they themselves have been chosen by him and, after he has first been summoned according to rule to the assembly of his bishops, his case is justly heard and reasonably decided by them. But let the conclusion of his case be referred to the apostolic see, so that it may be concluded there. § 4. Let no one who is absent be judged, "because both divine and human laws prohibit this." Likewise Bishop Felix said in the Third Council of Carthage, [c. 10]:

C. II. By how many bishops shall a bishop who has fallen into guilt be heard?

I propose, according to the statutes of the ancient councils, that if any bishop—which we do not desire—has fallen into some guilt, if there is an excessive necessity for him such that he cannot assemble many, then, lest he remain under the crime, let him be heard by twelve bishops.

Question IX

GRATIAN. Part I. Concerning accusers or witnesses, it is clear from the authorities of many persons that they cannot present the voice of accusation or testimony against one who is absent. For Pope Telesphorus says, [sole letter]:

C. I. Unless the defendant is present, the accuser shall not be heard.

We decree that no credence at all is to be given to an accuser who presents a case when his adversary is absent, before a just examination of both parties.

C. II. A sentence may not be rendered when the adversary is absent.

Likewise Pope Eleutherius, [in the letter to the Bishops of Gaul]. Let the judges of the Church take care not to render a sentence when the person whose case is being argued is absent, because it will be void; indeed, they will also give an account in a synod for what they have done. Neither the calumny nor the voice of a traitor shall be heard.

C. III. When the defendant is absent, the accuser shall not be heard.

Likewise Pope Callistus, [letter II to the Bishops of Gaul]. When the person whom he wishes to accuse is absent, no credence shall be given to an accuser in anything. He shall be received with difficulty without a writing, but never by means of a writing, because no one can be accused through a writing; rather, let each person pursue his accusation in his own voice and with the person whom he wishes to accuse present.

C. IV. Things done against absent persons shall be made entirely void.

Likewise Pope Cornelius, [to Rufus, letter II, c. 2]. Let all things which in any business or place are done or adjudged against absent persons be made entirely void, because no one condemns an absent person and no law condemns him.

C. V. One who is not accused or convicted in person shall not be judged.

Likewise Pope Marcellus, [to Maxentius, letter II]. No one ought to be judged or condemned before he has lawful accusers present and receives a place for defending himself in order to clear away the crimes.

C. VI. Concerning the same.

Likewise Pope Damasus, [to Archbishop Stephen, letter III, c. 8]. It is also held to have been sanctioned in the decrees of the holy Fathers that it is not canonical to judge or condemn any priest before he has present accusers canonically examined and receives a place for defending himself, that is, ecclesiastical delays for clearing away the crimes, etc.

[PALEA.

C. VII. The same Damasus, continuously in the same place.

Nor, without an apostolic precept, shall the accusation at the first examination be conducted outside the person's own province; reverence must be preserved toward the apostolic see in all cases, because the ancient rule of the Fathers also teaches this, and the imperial statutes accord with it. “The

examination of crimes," they say, "must be conducted where the crime was committed. For elsewhere one accused of crimes is prohibited from being heard." And elsewhere it is commanded in the canons: "All business is to be concluded in its own place, where it arose," and other such things similar to these, with apostolic authority nevertheless preserved in all matters, so that nothing concerning them is determined before it is known to please the apostolic see, by which it is fitting that all be supported.]

C. VIII. Concerning the same.

The same, [to the Bishops of Italy, letter VI]. Let one who has chosen to accuse another accuse in person by himself and not through another, with a formal inscription first made. Nor shall anyone ever be judged before he has lawful accusers present and receives a place for defending himself in order to clear away the crimes.

C. IX. Concerning the same.

Likewise from the Sixth Council of Toledo, [c. 11]. It is fitting that the life of an innocent person be stained by no destruction wrought by an accuser. Therefore, whoever is charged with a crime by anyone shall not, after being accused, be given over to punishment before the accuser is presented and the sentence of the laws and canons is sought. But if the person is found unworthy to accuse, let no judgment be made upon his accusation.

C. X. Let one who neglects to be present for his case be struck by a sentence.

Likewise Pope Boniface to the Gauls, [letter II]. We have decreed that your judgment ought to take place within the province and that a synod is to be assembled before the kalends of November, so that, if he wishes to be present, he may, being present, answer the charges if he has confidence; but if he has neglected to be present, let him gain no delay of sentence from his absence. For it is manifest that one who does not use the opportunity of clearing himself in a judgment granted and appointed so many times confesses concerning the crime. For it makes no difference that, in the present examination, all the things which have been said are not proved, since the acknowledgment itself is established by the absence procured so many times.

C. XI. One who is absent can neither be accused nor judged.

Likewise Pope Felix, [to the Bishops of Gaul, letter II]. When the adversary is absent, the accuser shall not be heard, nor will a sentence spoken by a judge when the other party is absent obtain any firmness.

C. XII. A definitive sentence shall not be rendered when the other party is absent.

Likewise Pope Nicholas to Gallino, Archbishop of Siena. Truly, one is not a just mediator who does not fear to decide the disputes arising between both litigants when one is present and the other absent. These things having been premised, we will and admonish by apostolic authority that, if the priest concerning whom the matter is conducted has wished after his excommunication to approach the apostolic see, no one shall presume to impede his journey.

C. XIII. A sentence is not to be rendered against one who is absent.

Likewise Pope Zephyrinus, [to the Bishops of Sicily, letter I]. Let no one who is absent be judged, because both divine and human laws prohibit this. GRATIAN. Unless he is absent through contumacy. For contumacy causes him to be regarded as present.

C. XIV. Concerning the same.

Likewise Pope Nicholas to Gallino, Archbishop of Siena. You indicate that Bishop Hermann has frequently been accused concerning certain things, for which, because the person on his side is absent, we undoubtedly cannot believe one party to the detriment of the other, although up to this point you have not said what those transgressions were, nor have you plainly shown whether that prelate was of sound mind or not when he perpetrated those transgressions. We judge it more satisfactory in the meantime to regard any infirmity whatsoever as belonging to the punishment of sin rather than to sin itself, and a person so afflicted ought rather to be cared for and treated with compassion than punished or struck in any way.

C. XV. Let witnesses give testimony only concerning the things which they know in person.

Likewise Callistus, [Pope, to the Bishops of Gaul, letter II]. Let witnesses not give testimony through any writing whatsoever, but, being present, let them give true testimony concerning the things which they saw and knew. Nor shall they give testimony concerning other cases or business except those which are known to have been transacted in their presence. Part II. GRATIAN. Concerning things which they heard, however, they can give testimony in a civil case if they were summoned for this purpose. Hence it is read in Collation VII, under the title *On Witnesses*: § 1. "If a debt has been put in writing and proof of payment is offered by the litigants through witnesses without a writing, then we will that it be receivable before the judge, provided that the witnesses were assumed for this very purpose: that they should offer testimony for a payment to be made, or for the remembrance of a payment already made to someone, and for the confession of the person who received the money. But these empty testimonies, given incidentally—either by a person who, coming for another business, heard someone say that he received gold from someone or owed it to someone—we judge to have no force for any reason." Part III. § 2. It is also necessary that they see at the same time. But if one saw at one time and another at another, the diversity of the times does not admit their testimony. Hence Pope Leo:

C. XVI. Those who are not established to have been present at the same business are not admitted to testimony.

Witnesses who testify to something for purposes of calumny are likewise to be punished, nor are their voices admitted as those of several persons when the diversity of the times has prevented them from being present together.

C. XVII. Let a witness add nothing of his own to the sequence of deeds.

Likewise Ambrose in the book *On Paradise*, [c. 12]. A pure and simple sequence of the testimony is to be disclosed. Very often, when a witness adds something of his own to the sequence of deeds, he discolors the credibility of the whole testimony by the falsehood of a part. Therefore, nothing which seems good is to be added.

C. XVIII. One who is absent can neither accuse nor be accused.

Likewise Pope Felix, [to the Bishops of Gaul, letter II]. An absent person cannot accuse or be accused through another, nor shall a relative by marriage be admitted as a witness. Part IV. GRATIAN. Unless it is in a crime of injuries, in which an illustrious person can prosecute and defend even through a procurator, with the remaining formalities observed, as in the Code, under the title *On Injuries*, final law.

C. XIX. When the defendant is absent, a bill of accusation is offered in vain.

Likewise Pope Pelagius to Sindua, Master of the Soldiers. The documents which Lucidius gave us would have been valid if his adversary had been present there at that time. But because the acts which he recounted to us are read to have been done while the adversary was absent, the laws do not receive such things.

C. XX. Let witnesses give testimony after an oath has been physically offered.

The same to Decoratus the Patrician. We exhort you, while preserving under fear of the Lord the accustomed sincerity of your conscience in this business also, to cause all fear to be cut away from the persons who can know the truth of this case; and, after they have been presented before you, touched the most holy Gospels, and also lawfully offered an oath, let them disclose the things which they know in the truth of the matters by the profession of their testimony, so that, after all things have been laid open, you may recognize what things are to be adjudged according to the laws and justice, and may give a conclusion consonant with the laws and the truth.

C. XXI. The accuser and the accused ought to be present together.

Likewise Pope Nicholas to Hincmar, Archbishop of Reims. According to the teachings of the sacred Scriptures and the balance of justice, it is necessary for both the accused and the accuser to be present together, and for one party, endowed with however much authority and of whatever kind, to be heard in such a manner that no prejudice at all is inflicted upon the other party.

Question X

GRATIAN. That those who fail in the first charge are not to be admitted to the following charges is confirmed by the Seventh Council of Carthage, in which the following is read to have been established, [c. 3]:

C. I. One who fails in the first charge shall not be admitted to the others.

It was decided that, whenever many crimes are charged against clerics by accusers and the accusers have been unable to prove one of them, concerning which they proceeded first, they shall no longer be admitted to the others. GRATIAN. The same is proved by the authority of the Third Council of Arles, in which it was determined as follows, [c. 24]:

C. II. Those who make false charges against their brothers shall not communicate until the end.

It was decided that those who have been convicted of making false charges against their brothers shall not communicate until the end, as the great synod previously established, unless they have repented with fitting satisfaction.

C. III. One who is unable to prove what he charges is thereafter not admitted to make an accusation, unless he wishes to assert only his own civil case.

Likewise Felix in his second decretal, to the Bishops of Gaul. If the persons of accusers have appeared culpable in the judgment of bishops, they shall thereafter not be admitted to make an accusation unless they wish to assert their own cases, but not criminal or ecclesiastical ones. GRATIAN. Therefore, since those who make false charges against their brothers are prohibited from communion until the end of life, and since those who are found culpable in the judgment of bishops are prohibited from thereafter being admitted to make an accusation, it is apparent that those who fail in the first charge cannot proceed to the following charges, as persons who make false charges.

Question XI

GRATIAN. Part I. By the authority of many persons, it is prohibited that an accusation be turned by the accused against the accuser. For Pope Stephen says, [letter II, c. 7]:

C. I. Accused persons cannot accuse others unless they first clear themselves.

The license to charge crimes is to be denied to accused persons before they have freed themselves from the crime by which they are pressed, because no credence is to be given against others to the confession of persons entangled in crimes unless they have first proved themselves innocent, since the profession of an accused person against anyone whatsoever is dangerous and ought not to be admitted.

[C. II.]

In book IX of the Code, title I, [law 19]. The Emperors Valentinian, Valens, and Gratian. The license to charge crimes of an equal or lesser gravity is to be denied to accused persons—unless they are prosecuting injuries to themselves and their own people—before they have freed themselves from the crime by which they are pressed, yet in such a manner that they too can lodge a formal inscription against those persons even while the accusation is pending.

C. III. Concerning the same.

Likewise from a decree of Pope Hadrian, [c. 33]. No credence is to be given against others to the confession of persons entangled in crimes unless they have first proved themselves innocent, because the profession of an accused person against anyone whatsoever is dangerous and ought not to be admitted. GRATIAN. This is to be understood in a crime of equal or lesser gravity. But if he wishes to accuse him of a greater crime—for example, if one accused of fornication wishes to assail his accuser for perjury, homicide, simony, or any other crime of this sort—he is not prohibited by these

authorities. § 1. For sometimes a criminal question takes precedence over a civil one, and sometimes over another criminal question. Hence it is read in book III of the Code, under the title *On the Order of Judgments*, [law 4]: "After a civil question has been set aside, it often happens that a crime is judged first, because, as the greater matter, it is deservedly preferred to the lesser."

[C. IV.]

Likewise book IX, [Code, title *On Those Who Cannot Accuse*], law 1. "It is first necessary that you answer concerning the crimes of slaughter and wounds which are charged against you by your adversary as the graver matters; and then, from the outcome of the case, the judge will assess whether you are to be permitted to accuse the same person, even though you lodged the formal inscription first." Part II. [GRATIAN.] Sometimes a civil question takes precedence over another civil question, and sometimes over a criminal one. For, as it is read in book VII of the Code, under the title *On the Order of Cognitions*: "If there is a controversy concerning an inheritance and freedom, the case concerning freedom ought to be conducted first." Likewise: § 1. "If some crime is alleged against a person who is said to be freeborn, the proceeding concerning freedom ought first to be conducted in its order, with the governor providing his cognizance; for if the delict has been proved, it is necessary first to know whether punishment ought to be decreed against him as a free and freeborn person or as a slave." Part III. Likewise: § 2. "One who confesses that he suffers a controversy concerning his status asks in vain that the power be given to him to accuse a person whom he acknowledges to be his own master. But when the proceeding concerning freedom has been concluded, if he has been pronounced a slave, he will not be able to accuse his master." § 3. "For if anyone from the household or slaves of any house whatsoever has come forth as informer and accuser of any crime whatsoever, intending to assail the reputation, person, and fortunes of the one to whose household he adhered or whose dominion he was under, let him be struck with the avenging sword at the very exposition of the crimes and beginning of the accusation, before the production of witnesses and before the examination of the judgment. For a death-bearing voice ought to be cut off rather than heard. We except, however, the crime of treason." Similarly: § 4. "If freedmen have presumed to be accusers of those who manumitted them or of their heirs, they will be held by the same punishment as slaves, to pay the penalties before the beginning of the prohibited information."

Causa IV

GRATIAN. A certain man placed under excommunication intends to accuse a bishop. He brings forward an adolescent under the fourteenth year of his age for the assertion of his case. Prohibited from the accusation, he makes the adolescent the accuser and himself a witness. The adolescent desires to bear the person of accuser and witness. On the appointed day the bishop does not appear at the judgment of the chosen judges. He is suspended from communion. At length, when the judgment has been renewed, the accuser is found culpable in the accusation. Finally, he proceeds to the assertion of his own case. (Qu. I.) Here it is first asked whether one placed under excommunication is able to accuse another. (Qu. II.) Second, whether anyone under the fourteenth year can testify in a criminal case. (Qu. III.) Third, whether one prohibited from an accusation can assume the person of a witness. (Qu. IV.) Fourth, whether the same person can be accuser and witness. (Qu. V.) Fifth, whether one who does not appear on the appointed day is to be removed

from communion. (Qu. VI.) Sixth, if the person of the accuser is found culpable in the judgment of bishops, whether he is thereafter to be admitted to the assertion of his own case.

Question I

GRATIAN. Concerning the first question, the following is read to have been established in the Seventh Council of Carthage, at which Faustinus, legate of the Roman Church, was present:

C. I. One who persists under excommunication is not admitted to accuse.

We determine that one is rightly not admitted to an accusation who, after he has been excommunicated and while he is still placed under that excommunication, has wished to accuse, whether he is a cleric or a layman. § 1. All who are also stained by marks of infamy—that is, stage performers or persons subject to acts of turpitude—and heretics also, whether pagans or Jews, are prohibited from an accusation.

C. II. Those who are separated from the Church by schism or excommunication are proved to be heretics.

Likewise Pope Nicholas, [in the letter to Emperor Michael which begins, "We had proposed"]. But that those who had already been deposed, excommunicated, or anathematized by our aforesaid brother and fellow minister Ignatius could render no condemnation against him is declared from the chapter produced from the Second Universal Synod, when it is said: "But if the crime which has been alleged against a bishop is ecclesiastical, then it is necessary that the persons of the accusers be tested, so that, first, heretics may not be permitted to make accusations against orthodox bishops concerning ecclesiastical business." But lest we deny that these persons are heretics, hear what follows: "By heretics," they say, "we mean both those who were formerly cast out by the Church and those who have afterward been anathematized by us." Moreover, if even thus you still do not believe, hear what is added: "But besides these," they say, "also those who feign that they confess the sound faith are schismatics if they hold assemblies apart from bishops who communicate with us. Then also, if certain persons have been rebuked by the Church concerning certain causes and cast out or excommunicated, whether from the clergy or from the lay order, neither are these permitted to accuse a bishop before they have first been freed from their own crime. Similarly, those who are under a prior accusation are not acceptable as accusers of a bishop or of other clerics before they have shown themselves innocent of the crimes alleged against them." You are not ignorant of what peril threatens those who contemn this rule.

Questions II and III

GRATIAN. Part I. The second and third questions are concluded in one and the same chapter by the same Council, [the Seventh Council of Carthage]. It is as follows:

C. I. Those who are repelled from an accusation, or who have not yet reached the fourteenth year, cannot be witnesses.

We judge that those who have been ordered not to be admitted to an accusation are also not to be admitted to testimony, nor those whom the accuser himself has produced from his household. Those

placed within the fourteen years of their age, however, shall not be admitted to testimony.

[PALEA.

C. II. Concerning the same.

Likewise from the Council of Mâcon, c. 6. It pleased the holy assembly that witnesses shall not be hired for a price to give testimony; that each of the best and more trustworthy persons shall be assumed for testimony, so that the person against whom they ought to bear testimony can bring no calumnious objection against them; and that no one shall give testimony unless fasting.] Part II. GRATIAN. Likewise, in a criminal case, "one who previously gave testimony against that defendant cannot be produced as a witness," as is found in book XXII of the Digest, under the title *On Witnesses*, [law 23]. Likewise under the same title, [law *Ob carmen*, § *If witnesses*]:

[C. III.]

If all the witnesses are of the same honor and reputation, and the quality of the business and the inclination of the judge concur with them, all the testimonies are to be followed. But if some of them have said something different, although they are unequal in number, that which accords with the nature of the business and is free from suspicion of enmity or favor is to be believed; and the judge will confirm the inclination of his mind from the arguments and testimonies which he has found more suitable to the matter. For one ought not to regard the multitude, but the sincere credibility of the testimonies and those testimonies with which the light of truth is more fully present. Likewise, [law 2 of the Digest, under the same title]: § 1. In witnesses, credibility, dignity, morals, and gravity are to be weighed; and therefore witnesses who waver against the credibility of their own testimony are not to be heard. Likewise, [law 3]: § 2. The credibility of witnesses is to be diligently examined, and therefore, in their person, first of all the condition of each must be investigated: whether someone is a decurion or a plebeian; whether he is of an honorable and blameless life, or is marked and blameworthy; whether he is wealthy or needy, so that he might readily admit something for the sake of gain; whether he is an enemy of the person against whom he bears testimony, or a friend of the person for whom he gives testimony. For if a testimony is free from suspicion—either on account of the person by whom it is offered, because that person is honorable, or on account of the cause, because it is for the sake of neither gain, favor, nor enmity—it is to be admitted. Likewise, [a little later in the same law]:

Part III. § 3. By the Julian Law concerning violence it is provided that the following shall not be permitted to give testimony against the defendant under that law: one who was manumitted by him or by his parent; those who are below puberty; one who has been condemned in a public judgment and has not been restored in full; one who is in chains or public custody; one who has hired himself to fight with beasts; one who openly makes or has made gain from prostitution; or one who has been judged or convicted of accepting money in order to give or not to give testimony. Likewise, [law 4]: § 4. By the Julian Law concerning public judgments it is provided that a person shall not be summoned against his will to give testimony against a father-in-law, son-in-law, stepfather, stepson, male cousin, female cousin, a male cousin's son, or those who are of the preceding degree. § 5. Likewise, neither against his own freedman, nor against a freedman of his children, his parents, his husband, or his wife. § 6. Likewise, patrons and patronesses are not to be compelled to give testimony against freedmen, nor freedmen against a patron. § 7. But when it is excepted that a son-in-law or father-in-

law shall not be compelled against his will to give testimony, it is held that the daughter's betrothed is also included under the designation of son-in-law, and the betrothed woman's father under that of father-in-law. Likewise, [law 6]: § 8. Those who can be commanded to become witnesses are not regarded as suitable witnesses. Likewise, [law 7]: § 9. A slave's answer is to be believed when there is no other proof for eliciting the truth. Likewise, [law 8]: § 10. Elderly persons, persons in ill health, soldiers, those who are absent with a magistrate on public business, or those who are not permitted to come shall not be compelled against their will to give testimony. Likewise, [law 19]: § 11. Tax farmers also do not give testimony against their will. § 12. Likewise, one who is absent not for the purpose of evading testimony. § 13. Likewise, one who has contracted to furnish provisions to the army. Nor can a summons to give testimony be served upon wards. Likewise, [law 20]: § 14. An accuser ought not to summon as a witness one who is a defendant in a public judgment or one who is less than twenty years old. [Law 21.] § 15. One condemned on account of a defamatory poem will be disqualified from bearing witness. Likewise: § 16. If the matter requires, not only private persons but also magistrates, if they are present, shall give testimony. A praetor too ought to give testimony in a judgment concerning a case of adultery. § 17. But if the condition of the matter is such that we are compelled to admit an arena-fighter as a witness, or a similar person, his testimony is not to be believed without torture. Likewise, [law 24]: § 18. It was decided that witnesses whom the accuser has produced from his household shall not be questioned. [Law 25.] § 19. Advocates also shall not give testimony in a case in which they provide advocacy; this is also to be observed in agents of business. Likewise, [law 16]:

Part IV. § 20. Those who have spoken falsely or inconsistently, or who have betrayed the testimonies to either party, are fittingly punished by the judges. Likewise, [law 17]: § 21. A father and a son who is in his power, and likewise two brothers who are in the power of the same person, can both become witnesses in the same testament or in the same business, because it does no harm for several witnesses from one household to be employed in another person's business. Likewise, [law 15]: § 22. Whether a hermaphrodite can be employed as a witness to a testament is shown by the quality of the sex which predominates. Likewise, [law 9]: § 23. A father is not a suitable witness for a son, nor a son for a father. [Law 10.] § 24. No one is understood to be a suitable witness in his own matter. Likewise, [law 11]: § 25. Even one who was not asked is understood to be a witness for establishing the credibility of a transaction. Likewise, [law 12]: § 26. Where the number of witnesses is not added, even two will suffice. For a plural expression is satisfied by the number two. Likewise, [law 3]: § 27. Concerning witnesses who speak their testimony straightforwardly, it must be considered whether they bring one and the same rehearsed speech or answer extemporaneously and plausibly the things about which they are questioned. Likewise: § 28. The truth of any matter is often discovered without public records; at one time the number of witnesses, at another their dignity and authority, and at another, as it were, concordant report confirms the credibility of the matter concerning which inquiry is made. Therefore, a judge ought not to bind his cognizance to one kind of proof, but ought to assess according to the judgment of his own mind what he believes or what he considers insufficiently proved to him. Likewise: § 29. The authority of witnesses who are present is one thing; that of testimonies which are customarily recited is another. Likewise, book IV of the Code, under the title *On Witnesses*, [law 2]: § 30. Witnesses alone do not suffice for proof of free birth unless they are aided by instruments and arguments. Likewise, [law 3]: § 31. Even by civil law the credibility of members of the household is disapproved. Likewise, [law 4]: § 32. It is certain that

testimony offered alone, with the case not approved by other lawful supports, is of no moment. Likewise, [law 5]: § 33. Those witnesses ought to be employed to assist the truth who can prefer the credibility owed to judicial solemnity above every favor and power. Likewise, [law 6]: § 34. Parents and children are not to be admitted to testimony against one another even voluntarily. Likewise, [law 7]: § 35. One who makes a claim ought to bring his own proofs for his claim, and not ask that the adversary be compelled to produce those through whom a case may be made for him. Likewise, [law 8]: § 36. Slaves can be questioned neither for nor against their master, but they can be questioned concerning their own deed. Likewise, [law 9]: § 37. Witnesses are constrained by the sanctity of an oath before they offer testimony, and credence is to be given to witnesses of higher standing. § 38. But let no judge in any case readily allow the testimony of one person to be admitted; indeed, the answer of one witness shall not be heard at all, even if he shines with the honor of the governor's court. Likewise, [law 10]: § 39. The laws have removed from everyone the power to give testimony in his own matter. Likewise, [law 11]: § 40. Let free witnesses be summoned for the cases of others if they are not said to be associates and participants in the crime, but their credibility arising from knowledge is sought. But fitting expenses shall be furnished to those coming to the judgment by the accuser or by those through whom they were summoned, even if the witnesses are to be produced by either party in a pecuniary case. Likewise, [law 12]: § 41. Let freedmen not dare to come forward voluntarily against their patrons; indeed, even when summoned, they shall not be compelled to come into judgment. Likewise, [law 17]: § 42. If anyone has used witnesses and the same witnesses are produced against him in another lawsuit, he will not be permitted to except to their persons unless he has shown that enmities later arose between himself and them from which the laws command that witnesses be repelled; his license to impugn their testimony from the depositions themselves, of course, is not to be taken away. § 43. But if he has also shown by clear proofs that they were corrupted by the giving or promise of money, that allegation also ought to be preserved whole for him. [GRATIAN.] But the example of blessed Brice is objected, who was proved innocent by the voice of a boy thirty days from birth. But divine miracles are to be admired, not drawn into an example for human action.

Question IV

GRATIAN. Part I. Concerning the fourth question, Pope Fabian established, [letter II to the Eastern Bishops], saying:

C. I. No one can be accuser and witness or judge at the same time.

Let no one ever presume to be accuser and judge or witness at the same time, because in every judgment it is always necessary that there be four persons: namely, chosen judges, suitable accusers, fitting defenders, and lawful witnesses. Judges, however, ought to use equity; witnesses, truth; accusers, intention toward enlarging the case; defenders, mitigation toward diminishing the case.

C. II. No one can bear two persons in a case.

Likewise Pope Damasus, [letter IV, c. 7]. Let no one be introduced personally into a case, but let accusers and accused persons be heard with equal reason, according to what order requires. But let accusers and judges not be the same persons; rather, let accusers be separate, judges separate, witnesses separate, and accused persons separate, each one in his own order. Part II. § 1. Let a formal

inscription always be made so that the calumniator may receive retaliation, because before an inscription no one ought to be judged or condemned, since even the laws of the world maintain these same things. GRATIAN. In book IX of the Code, under the title *On Accusations*, [law 7]; in the book of the Code *On Adulteries*, [law 6]; under the title *On Cattle Thieves*, [sole law]. § 1. Sometimes an accusation can also be made without a formal inscription. "For it is not unknown that those things which are reported to governors by officials can be weighed even without the formalities of accusations." § 2. Likewise, [Code, *On Adulteries*, law 6]. If a husband wishes to accuse his wife of adultery by a husband's right, that is, within sixty available days, he can make her a defendant from suspicion alone and is not held by the bond of a formal inscription. § 3. Likewise, [Code, *On Cattle Thieves*, sole law]. An accusation concerning a driven-away animal is presented not only with formal inscriptions but also without that observance. § 4. Likewise, [Code, *On Accusations*, law 8]. If anyone thinks that he has suffered an injury from another and wishes to bring a complaint, let him not run to the *stationarii*, but approach the authority of the governor, either offering written petitions or lodging his complaints in the official records. § 5. But in other criminal cases it is fitting that formal inscriptions be set forth first, which designate, namely, the magnitude of the crime and the time, so that the fitting authority of the laws may terrify either party. Part III. GRATIAN. An accuser or witness ought not to be produced from the household of the judge either, lest the judge fall into a cause of suspicion. Hence Pope Nicholas, [to Emperor Michael, in the letter which begins, "We had proposed"]:

C. III. A judge from whose household either the accuser or a witness is produced will fall under the charge of suspicion.

Contrary to ecclesiastical custom and the venerable laws, an accuser is produced from the imperial household, and one who can be commanded to give false testimony is employed. The judges become suspect, and wolves become guardians.

Question V

GRATIAN. Concerning the fifth question, the following is found to have been determined in the Third Council of Carthage, [c. 7]:

C. I. One who was unable to arrive for a case on the appointed day is not to be suspended from communion.

Whoever among the bishops is accused, let the accuser refer the case to the primates of that province. Nor shall the person against whom the crime is alleged be suspended from communion unless, after being summoned by letters, he has not appeared before the chosen judges to plead his case on the appointed day, that is, within the space of a month from the day on which it is established that he received the letters. But if he has proved some true causes of necessity by which it is manifest that he was unable to appear, let him have the unimpaired faculty of pleading his case within another month. Nevertheless, after the second month, let him not communicate until he is cleared. But if he has been unwilling to appear at a universal council so that his case may at least be concluded there, let him be judged to have spoken the sentence of condemnation against himself. During the time, to be sure, in which he does not communicate, let him not communicate in his own church or parish either. But if his accuser has never been absent on the days for pleading the case by

withdrawing himself, let him not be removed from communion. But if he was at some time absent by withdrawing himself, let the accuser be removed from communion when the bishop has been restored to communion, yet in such a manner that the faculty of prosecuting the case shall not be taken from the accuser himself if he has proved that he was not unwilling but was unable to appear on the appointed day.

Question VI

GRATIAN. The sixth question is concluded by the same chapter, in which it follows:

C. I. One who is found culpable in an accusation of a bishop is admitted to make an accusation only in his own civil business.

It was also decided that, when he has begun to proceed in the judgment of bishops, if the person of the accuser has been found condemnable, he shall thereafter not be admitted to make an accusation unless he wishes to assert his own cases, but not ecclesiastical or criminal ones.

C. II. One who is not permitted to accuse is able to conduct his own case.

Likewise from the Seventh Council of Carthage, [c. 2, near the end]. The license to accuse in their own cases is not to be denied to all those to whom an accusation is denied.

C. III. One who fails in the accusation of bishops will be able to proceed only civilly.

Likewise Bishop Felix to all Bishops, [established throughout the provinces of Gaul, letter II]. If the persons of accusers have appeared culpable in the judgment of bishops, they shall not be admitted to make an accusation unless they wish to assert their own cases, but not criminal or ecclesiastical ones.

[C. IV.]

Likewise Pope Hadrian, [in the capitularies, c. 5]. But if the persons of the accusers in the judgment of the bishops, etc., as above in the same words.

Causa V

GRATIAN. A written accusation is secretly composed to the infamy of a certain bishop; at length the accuser comes forth in public. The bishop, after being summoned once by letters and being unable to be present for his case on the appointed day, represented himself before the judge through a procurator. He is condemned without a synodal hearing. Finally, when the judgment has been renewed through an appeal, the bishop complains of the accuser's enmity; at length the accuser fails in his proof. (Qu. I.) First it is asked by what penalty one who secretly writes a defamatory libel and neglects to prove what he committed to writing is to be struck. (Qu. II.) Second, how many times he is to be summoned to the case before he receives a sentence of condemnation. (Qu. III.) Third, whether one who cannot be present for his case personally is able to conduct his case through a procurator. (Qu. IV.) Fourth, whether he is to be condemned without a synodal hearing. (Qu. V.) Fifth, whether anyone is to be regarded as an enemy for this reason, that he reports another person's crime. (Qu. VI.) Sixth, by what penalty one who is unable to prove what he alleged is to be punished.

Question I

GRATIAN. Concerning the first question Pope Hadrian writes, [in the capitularies, c. 49, otherwise 50], saying:

C. I. Let one who has neglected to prove writings against another's reputation be flogged.

One who has publicly fabricated a writing or insulting words against another's reputation and, upon being discovered, has not proved the writings shall be flogged; and let the one who first finds it tear it up, if he does not wish to incur liability for the author's deed.

C. II. Concerning the same.

Likewise Gregory, [book V, letter 30]. A certain man, filled with the counsel of a malignant spirit, in the silence of night placed in a location of the city a public declaration speaking criminally against Castorius, our notary and representative, and it also asserted to me that he craftily opposed the making of peace. If he does not come forth and publicly confess—whoever he may be who has presumed to do this or who gave his assent to the counsel of so great an iniquity—we decree by the Spirit of God and of our Lord Jesus Christ that he be deprived of participation in His holy body and blood. But if, because he is hidden and because he is unknown, he cannot be subjected to discipline, and, conscious of so great an evil and prohibited, presumes to receive the body and blood of the Lord, let him be struck by the punishment of anathema, so that, as a deceitful and pestiferous man, he may be divided from the body of holy Church. But if, upon entering that same city, he can publicly prove what he said, or, knowing for certain that he cannot demonstrate what he wrote, has openly confessed his error, let him not be deprived of participation in the Lord's body and blood, nor be regarded as estranged from the body of holy Church.

C. III. Let those who place defamatory libels in a church be anathematized.

Likewise from the Council of Elvira, [c. 52]. Let those who are found to place defamatory libels in a church be anathematized. GRATIAN. In the Code, book IX, title *On Defamatory Libels*, Emperors Valentinian and Valens: If anyone, unaware of its origin, finds a defamatory libel, whether at home, in public, or in any place whatsoever, let him either destroy it before another finds it or disclose its discovery to no one. But if he does not immediately either destroy those pages or consume them by fire, but has made their force known, let him know that he is to be subjected to a capital sentence as though he were the author of an offense of this kind. Such a libel, however, shall not harm another's reputation.

Question II

GRATIAN. The summons of one who is assailed ought to be made not once, but twice and a third time, over a suitable interval, by formal writings. Hence Pope Damasus writes [to Archbishop Stephen, letter III], saying:

C. I. The summons to a synod of one who is assailed shall be made in writing and over a suitable interval.

In accordance with the decrees of the Fathers, the canonical summons to a synod of one who is assailed ought to be made by formal writings over a suitable and canonical interval, because, unless he has been canonically summoned at the proper time and in canonical order, although he has come to the assembly because of any necessity whatsoever, he shall in no way answer his plotters unless he has wished to do so voluntarily.

C. II. At what intervals of time a defendant is to be summoned to a case.

Likewise Pope Sylvester. By the present decree we determine that first they be summoned in a paternal manner and be awaited for seven days, with permission for no ecclesiastical matter being forbidden. To this period of waiting let another seven days be added, with permission to enter a church and to hear all the divine offices being forbidden. Afterward let two days be added, during which they are to be suspended from the peace and communion of holy Church. Then let them be carried through yet another two days under the same period of waiting. When one day has been added to these, with all waiting now as it were despaired of, let the defendant immediately be struck with the sword of anathema.

C. III. No one's accusation shall be received through writings.

Likewise Pope Damasus, [to the Bishops of Italy, letter VI]. It has been reported to the apostolic see that you receive accusations against the brethren through writings without a lawful accuser. By apostolic authority we prohibit this from being done henceforth throughout the whole world, and we take care to correct without any delay what has recently been done; nor are the cases of those who are accused ever to be examined first through writings, before, summoned canonically to a synod upon the formal institution of the complainants, they come, and one who is present truly recognizes and understands from another who is present what things are charged against him. § 1. For secular laws require accusers to be present, and not absent through writings. Hence the canonical enactments of the Fathers proclaim not once but very often that no one can offer accusations or testimony through writings, nor may any persons give testimony concerning other matters except concerning those which are known to have been done in their presence. Likewise, one who has chosen to accuse another shall accuse in person by himself and not through another, a formal inscription of the charge having, of course, first been made. Nor shall anyone ever be judged before he has lawful accusers present and receives an opportunity to defend himself in order to wash away the charges. Care must also be taken lest anger steal upon anyone and cause him very quickly to do everything that is unlawful.

C. IV. Those expelled by force or fear, or despoiled of their possessions, shall not be summoned to a synod.

Likewise Pope Felix [II] to Athanasius and all the Eastern Bishops, [letter I, c. 3]. If the primates have been wholly unable to make peace familiarly between the accusers of bishops and those bishops, then at the lawful time let them canonically summon the bishops to a canonically convened synod, not within narrow periods of time, and not before they signify to them by writings what is charged against them, so that they may come prepared to answer. For if they have either been expelled by force or fear or despoiled of their possessions, they can neither be canonically summoned to a synod

nor ought they to answer their rivals before they are canonically restored and all their property is lawfully returned to them. GRATIAN. By these authorities it is most plainly given to be understood that, unless someone has been canonically summoned, even if he comes to a synod for some occasion, he is in no way compelled to answer his plotters. A summons is canonical, however, when, after the interval of days has been observed according to the authority of blessed Sylvester, he is ordered by letters to be present for his case, in which, by the authority of Pope Felix, it is necessary that what is charged against him be signified to him.

Question III

GRATIAN. That one who is impeded and is unable to be present for his case can conduct his case through a procurator appears to be proved by the authority of the Roman Synod celebrated in the time of Pope Hadrian, in which [c. 5] it is read to have been enacted thus:

C. I. Let one whom grave necessity presses send a legate for himself to a synod.

If a bishop is ill, or some grave necessity detains him, let him send a legate for himself to the synod; and let one against whom a charge is directed not be suspended from communion unless, summoned by letters to plead his case on the day appointed by the chosen judges, he has failed to appear—that is, unless an extraneous necessity has forestalled him—within the space of two or three months, or longer, as the case shall dictate. GRATIAN. In book IX of the Code, title *On Accusations and Formal Inscriptions*, [law 3], Emperor Alexander: The laws governing public trials permit absent defendants charged with capital crimes to be defended even through procurators. GRATIAN. § 1. Behold, a bishop, if he is impeded and unable to be present for his case, is ordered to send a legate for himself to the synod. But this legate is sent not to conduct the case, but to explain to the synod the necessity by which the impeded bishop was unable to present himself to the synod. No one, however, is permitted to conduct a case, especially a criminal one, except in person. Hence Pope Hadrian [c. 38] says:

C. II. One who accuses criminally, or is accused, shall litigate in person.

In criminal cases neither can an accuser accuse anyone except in person, nor is the accused permitted to defend himself through another person.

C. III. In all cases except criminal ones, bishops and priests shall have an advocate for themselves.

Likewise Pope Anacletus. Because a bishop and all priests are appointed solely for the praise of God and the performance of good works, each of them ought to have an advocate, both for ecclesiastical actions and also for his own—except, of course, in a public criminal charge—one found to be neither suspect because of an evil reputation, but of good repute and praiseworthy skill, lest, while they attend to human gains, they lose eternal rewards.

Question IV

GRATIAN. That he ought not to be condemned without a synodal hearing is proved by the authority of Pope Julius, who says [letter I]:

C. I. A bishop ought neither to be judged nor heard except in a lawful synod.

Let no bishop assailed concerning certain criminal charges be heard, judged, or condemned except in a lawful synod convened at its proper time by apostolic authority. But if anything has been presumed otherwise by certain persons, let what they have done be reduced to nothing and in no way be reckoned among ecclesiastical statutes.

C. II. An accused bishop shall be heard by twelve, but the conclusion of the case shall be referred to the apostolic see.

Likewise Zephyrinus, Bishop of the city of Rome, to all Bishops, [letter I]. If it is necessary, let every accused bishop choose twelve judges by whom his case is to be judged; nor shall he be heard, excommunicated, or judged before they are chosen by him personally and, after he has been regularly summoned to the assembly first of his own bishops, his case is justly heard and reasonably decided by them. But the conclusion of his case shall be referred to the apostolic see, so that it may be terminated there, and it shall not be concluded before it is supported by its authority. GRATIAN. That a bishop is prohibited from being condemned without a synodal hearing must be understood without prejudice to the Roman see, which by its own authority is able to condemn any persons or absolve those condemned. Hence Gelasius: "They themselves are the canons, etc." below, in the cause: "Marked by a sentence of excommunication." § 1. Likewise Hadrian, [c. 8]: "With the primacy of the Roman Church preserved in all things, it is manifest that the synod of each province shall administer those things which are within that province, as is established to have been decreed in the Council of Nicaea." But when the accused has come to the council, whatever is transacted in the deliberations of those sitting or is proposed by the accusing party shall be put forward not with contentious voices but with a most gentle account of words. Hence it is read in the Eleventh Council of Toledo, [c. 1]:

C. III. Contentious persons shall have no place in the cognizance of cases.

While the Lord's priests are sitting in the place of blessing, no one ought either to make a clamor with indiscreet voices or to disturb it with any tumults; no one is even to be occupied with vain tales or laughter, or—which is worse—to pour forth tumultuous voices in obstinate disputes. "For if anyone," as the Apostle says, "thinks himself to be religious, not bridling his tongue but deceiving his heart, this man's religion is vain." For justice loses its worship when the whirlwind of those making a clamor confounds the silences of judgment, as the Prophet says: "The worship of justice shall be silence." Therefore, whatever is transacted in the deliberations of those sitting or is proposed by the accusing party ought to be put forward with such a most gentle account of words that neither may contentious voices disturb the understanding of the hearers nor may they weaken the vigor of judgment by tumult. Therefore, whoever in the assembly of a council believes that he may violate these things set forth above, and disturbs the council contrary to these prohibitions by tumult, insults, or laughter, in accordance with the edict of divine law which commands, "Cast out the

scoffer, and contention shall go out with him," let him, dragged from the session with every disgrace, withdraw from the common assembly and bear a sentence of excommunication for three days.

Question V

GRATIAN. But now it is asked whether anyone is to be judged malicious because he reports another's crime. Concerning this Augustine writes thus, [sermon III *On the Common Life of Clerics*, or rule 3, saying]:

C. I. One who conceals a crime does more harm than one who reports it amicably.

Do not judge yourselves malicious because you report another's crime. Indeed, you are more harmful if, by keeping silent, you permit your brothers—whom you can correct by reporting them—to perish. For if your brother has a wound in his body which he wishes to be concealed because he fears its being cut, is it not cruelly kept silent by you and mercifully reported? How much more, therefore, ought you to disclose it, lest it putrefy more grievously in the heart?

C. II. Neither is one who spares a friend, nor one who strikes an enemy.

The same to Vincentius, a Donatist and Rogatist, [letter XLVIII]. Not everyone who spares is a friend, nor is everyone who strikes an enemy. "The wounds of a friend are better than the voluntary kisses of an enemy." It is better to love with severity than to deceive with gentleness. § 1. Bread is more usefully taken away from a hungry person if, secure concerning food, he was neglecting justice, than bread is broken for a hungry person so that, seduced, he may acquiesce in injustice. § 2. Both one who binds a madman and one who rouses a lethargic person are troublesome to both and love both. § 3. Who can love us more than God? And yet He does not cease not only to teach us gently but also to frighten us beneficially. To the gentle fomentations by which He consoles us He often also joins the most biting medicine of tribulation; He exercises the patriarchs, even the pious and religious, by hunger; He drives a contumacious people with graver punishments; when the Apostle asks three times, He does not remove from him the thorn of the flesh, so that virtue may be perfected in infirmity. And below: § 4. You should know that at times a thief scatters fodder to turn cattle away, and at times a shepherd recalls wandering cattle to the flock with a whip.

C. III. One who is chastised and corrected is not held in hatred but is loved.

Likewise from the sermon [LXXXIV] of Ambrose, "Perhaps More Bitter." A father does not always kiss his son, but sometimes chastises him. Therefore, when one who is loved is chastised, then dutiful affection is exercised toward him. For love too has its own wounds, which are sweeter when they are inflicted more bitterly. For religious chastisement is sweeter than flattering remission. Hence the Prophet says: "The wounds of a friend are sweeter than the voluntary kisses of an enemy." GRATIAN. From these words it is given to be understood that one who pursues a crime by accusing or judging has contributed more to a brother's benefit than one who strives to foster it by concealing it. Eusebius, however, appears to enact the contrary when he prohibits those who voluntarily confess the crimes of others from being received in the accusation of bishops, saying [letter I to the Bishops of Gaul]:

C. IV. Those who voluntarily confess the crimes of others shall not be admitted to an accusation.

Those who are suspect either in the Catholic faith or because of enmity shall not be admitted to the accusation of bishops. Nor shall those who voluntarily confess the crimes of others. And therefore the truth, brought forth voluntarily, must be carefully elicited anew, though it cannot have a voice in them. A religious torturer ought to exact this truth from its hiding places by diverse tortures, so that, while bodies are subjected to punishments, the things that were done may be faithfully and truthfully investigated.

C. V. Concerning the same.

Likewise in Proverbs, [c. 11]. One who walks deceitfully reveals secrets; but one who is faithful conceals what was committed to his mind. And below, [c. 25]: § 1. Do not quickly bring forth in a quarrel what your eyes have seen, lest afterward you be unable to make amends when you have dishonored your friend. GRATIAN. But it is one thing to report the crimes of others out of charity, so that those whom we cannot correct by a secret admonition may, once convicted, be corrected by a judge's sentence, and another thing either to charge false things by plotting or readily to reproach true things by taunting. The former is an office of charity, but the latter of impiety. § 1. Hence it is said in the same Proverbs, [c. 12]: "The words of the impious lie in wait for blood; the mouth of the just shall deliver them." And below: "One who speaks what he knows is a judge of justice; but one who lies is a deceitful witness." Likewise: "The lip of truth shall be steadfast forever; but one who is a sudden witness fashions a tongue of falsehood." Likewise, [c. 13]: "One who guards his mouth guards his soul; but one who is inconsiderate in speaking shall experience evils. The just man will detest a lying word; but the impious man confounds and shall be confounded." § 2. Likewise Augustine on Psalm 34: "If at any time through human infirmity our feet are moved into some sin, the most iniquitous tongues of our enemies rise up; when pity ought to have been shown, the impious ridicule that for which the pious grieve."

Question VI

GRATIAN. Part I. One who cannot prove what he has charged is to be punished. Hence Pope Hadrian says, [in the capitularies, c. 41]:

C. I. Let one who has charged false things against others be punished.

Everyone who has charged false things against others shall be punished and, on account of the falsity, shall bear infamy.

C. II. Concerning the same.

Likewise Gregory. One who does not prove an inflicted calumny ought to incur the penalty which the defendant would certainly have sustained if he had proved it.

C. III. With what penalty one who does not prove a charged crime is to be struck.

The same in the Register. Because, according to the canonical opinions of the Fathers, one who does not prove an inflicted calumny ought to incur a penalty, and because by this principle a subdeacon

could not prove a crime against a deacon, since he did not have the imposition of the hand—which he could have been deprived of—he lacked not only priesthood but office and deserved to be chastised with blows as truly infamous. For since any crime is proved against a layman by three witnesses, it is not surprising if, when he is unable to prove what he charged, he is subjected by analogy of law to bodily infamy in the same manner as a layman. For what it would have been for a deacon to lose his grade, this it was for a subdeacon to have lacked fullness of reputation. In book I of the Code, title *On Bishops and Clerics*, [law 8], Emperor Theodosius:

Part II. § 1. Let priests give testimony without the injury of interrogations, yet in such a way that they do not fabricate false things. But let the other clerics who follow their grade or order, if they have been requested to give testimony, be heard as the laws command. Nevertheless, let an action for falsity remain available to litigants if perhaps priests—who in their own name have been commanded to give the testimony of a higher station without any bodily injury—have suppressed true things for the very reason that they fear nothing. For those upon whom very great honor has been conferred through our command are much more deserving of punishment if they are found in a hidden crime. In the same, book IX, in collation IX: § 2. If priests and deacons have given false testimony, then, if it was in a pecuniary matter, let them be delivered to a monastery, separated from divine ministry only for twelve years; if in a criminal matter, let them, stripped of clerical honor, be subjected to the lawful penalties. Let the other clerics be lawfully coerced without distinction of the case.

C. IV. One who does not prove a charged crime shall not approach the ministry of holy communion.

The same to Bishop Januarius, [book III, letter 24]. Part III. Epiphanius the priest, criminally accused by the letters of certain priests, whose case we examined as we were able and, finding none of the things charged in him, we absolved so that he might return to his own place. Therefore, we wish you to investigate the authors of the charge against him; and unless the one who transmitted that letter is prepared to demonstrate what he charged by canonical and most rigorous proofs, let him in no way approach the ministry of holy communion.

C. V. With what penalty an informer is to be struck.

Likewise from a decree of Pope Hadrian, [c. 49]. Let the tongue of an informer be cut off, or, upon his conviction, let his head be cut off. § 1. Informers, however, are those who betray others out of envy.

[PALEA.

C. VI. Concerning the same.

Likewise from the Council of Elvira. If any informer has been a member of the faithful and someone has been proscribed or killed through his informing, it was resolved that he receive communion only at the end. If the case was less serious, he will be able to receive communion within five years. If he was a catechumen, let him be admitted to baptism after a period of five years.]

C. VII. Concerning the same.

Likewise from the Eighth Synod. If anyone has spoken falsely or stained the person of an innocent man with a false crime, let him be purified by a long penance according to the priest's judgment.

C. VIII. A secular or lay person who has wearied a church or cleric through calumny shall be restrained from communion.

Likewise from the Council of Agde, [c. 32]. If any of the secular persons has presumed through calumny to weary a church or cleric and has been convicted, let him be restrained from the thresholds of the church and the communion of Catholics unless he has worthily done penance.

Causa VI

GRATIAN. Two fornicators, marked by infamy, endeavor to accuse a certain religious bishop of simony; the defendant seeks the judgment of the archbishop of another province; at length the accuser fails in proof; the defendant is compelled to an assertion of his own innocence. (Qu. I.) First it is asked whether those ensnared by crime or marked by infamy are to be admitted to an accusation of this kind. (Qu. II.) Second, if the bishop wishes to turn the accusation against them, whether credence is to be given to his simple assertion. (Qu. III.) Third, whether it is lawful for him to seek the judgment of the archbishop of another province. (Qu. IV.) Fourth, whose judgment he is to seek if the bishops of his province happen to disagree concerning their sentence. (Qu. V.) Fifth, if the accuser fails in proof, whether the defendant is to be compelled to proof of his innocence.

Question I

GRATIAN. Part I. That those ensnared by crime cannot accuse others is attested by Pope Anacletus, [letter II to the Bishops of Italy], saying:

C. I. A priest is not permitted to be accused by criminals.

If it is commanded that a priest be chosen without crime, he is in no way permitted to be accused or calumniated by criminals, nor by any other persons than those who are without crime, who can be ordained priests by a just election, and who are found in all things to be such as those commanded to be chosen as priests.

C. II. Infamous persons, and those who on account of their faults cannot be advanced to the priesthood, shall not accuse priests.

Likewise Pope Hadrian, [in the capitularies, c. 21]. We say that all those whom secular laws call infamous are indeed infamous, as are all who, because their faults demand it, cannot be advanced to the priesthood. For it is unworthy that those who cannot be what these men themselves are should accuse them, because, just as greater persons are not judged by lesser ones, so neither can they be criminally charged by them.

C. III. Those who cannot attain the kingdom of God are infamous.

Likewise Pope Fabian, [letter II to the Eastern Bishops]. Those who perpetrate those sins concerning which the Apostle says, "Because those who do such things shall not attain the kingdom of God," are greatly to be guarded against and, if they are unwilling voluntarily, compelled to amendment, because they are sprinkled with the stains of infamy and slide down into the abyss unless aid is given them by priestly authority. § 1. Likewise also those concerning whom he himself says, "Not even to take food with one of this kind," because they are marked by infamy before they are healed by priestly authority

and reintegrated into the bosom of holy mother Church, since those who are outside us cannot communicate with us.

C. IV. Those excommunicated shall not be admitted to an accusation before satisfaction.

Likewise Pope Fabian, [letter II]. All those whom the Apostle commemorates, saying, "Not even to take food with them," are to be repelled from an accusation and are not to be received before satisfaction to the Church.

C. V. Priests ought not to be accused except by their coequals.

Likewise Clement to James, Bishop of Jerusalem, [letter I]. Blessed Peter, as the Lord taught, prohibited homicides and adulterers and all those bound by criminal bonds, and those who were not their coequals, from the vexation and accusation of bishops; and he taught that no one except coequals ought to bring anything against them. § 1. He also asked that all infamous persons, and those whom primates and secular laws do not receive, as well as laymen, ought always to be repelled from their accusation and vexation; and he commanded all to be subject to them. He taught that the life of all priests is higher, holier, and separated from secular and lay persons, and that spiritual persons and priests ought always to be set over and to be above carnal persons and laymen, because it ought to be a very small thing to us that we are arraigned and judged by such persons or by a human day. But he said that greater persons can in no way be accused or judged by lesser ones, because he taught that not only divine laws but also secular laws prohibit this.

C. VI. One who has been criminal cannot accuse priests.

Likewise Pope Hadrian, [in the capitularies, c. 68]. When one brings a criminal charge, it must be ascertained whether he himself was not previously criminal, because the accusation of a defendant against anyone is dangerous and ought not to be admitted. [C. 72:] § 1. Let witnesses, however, be without any infamy, having wives and children, and confessing Christ in every way. GRATIAN. But not only criminals, but also any other persons whatsoever are repelled from the accusation of bishops. Hence Pope Anacletus [letter I] says:

C. VII. One who accuses His servants does not please God.

If all things were avenged in this world, there would be no place for divine judgments. One who strives to aid the sun with torches labors at superfluous expense. Therefore, if anyone thinks that in this he pleases God—because he accuses His servants and says that he does this so that they may become better—he labors in vain and is driven more by the goads of envy than of charity, because the fullness of grace does not need an addition, nor does it require any increases of commendation.

C. VIII. The people cannot arraign or rebuke priests.

Likewise Pope Telesphorus, [sole letter, c. 3]. Priests, who with their own mouth confect the body of the Lord, are to be obeyed and feared by all, not torn apart or disparaged, because the Lord's people ought in no way to arraign those by whom they desire to be blessed, saved, and instructed, nor shall the common people be received in their accusation. For the people are to be taught and corrected by them, not they by the people, because a disciple is not above the master. § 1. Therefore, one who accuses or desires to condemn those who are appointed priests by Him accuses God's ordinance. The

same: § 2. Those who are not suitable shall not be received for an accusation; and we determine that all who take up arms against the Fathers, that is, priests, are infamous. For all Fathers, that is, priests, are to be venerated, not rejected, accused, or plotted against.

C. IX. Concerning the same.

Likewise Pope Pius, [letter I]. Let sheep not rebuke their shepherd; let the people not accuse the bishop, nor the common people arraign him, because a disciple is not above the master. For bishops are to be judged by God, who chose them as eyes for Himself. For they are not to be accused, arraigned, or torn apart by subjects or persons of a depraved life. And below: § 1. No one doing good wishes to harm another by word or deed; how much less ought a faithful man to come under suspicion that he says or does those things which he does not wish to suffer? For every suspicion is to be repelled rather than approved or received. GRATIAN. But detraction itself, although it arises from the vice of those who disparage, is nevertheless sometimes stirred up against good persons by the just judgment of God, so that detraction may humble those whom either domestic presumption or the favor of others had raised on high. Hence Ambrose, [on Luke c. 22]:

C. X. Lest anyone presume concerning himself, by God's command the tongues of evil persons are stirred up against him.

Imitate Peter saying for the third time: "Lord, You know that I love You." For, because he had denied three times, he confesses three times; but he denied by night and confesses by day. These things were said so that we may know that no one ought to boast of himself. For if Peter too fell because he said, "Even if others shall have been scandalized, yet not I," who else may rightly presume concerning himself? Finally, because David had said, "I said in my abundance: I shall not be moved forever," he confesses that this boasting had harmed him, saying: "You turned Your face away from me, and I was made troubled."

C. XI. So that good persons may be beneficially humbled, the tongues of evil persons rise against them.

Likewise Gregory, [book IX, letter 39 to Theoctista the Patrician]. There are very many who perhaps praise the life of good persons more than they ought, and, lest some elation creep in from praise, almighty God permits evil persons to burst forth into disparagement and rebuke, so that, if some fault is born in the heart from the mouth of those who praise, it may be suffocated by the mouth of those who censure. Hence it is that the teacher of the gentiles attests that he runs in preaching amid infamy and good reputation, who also says: "As deceivers, and truthful." GRATIAN. But by this authority spiritual persons are prohibited from being accused by carnal persons, not carnal persons by spiritual ones. This is given to be understood from the words of the same author, which he added in the same chapter, saying: "When the head is ailing, the remaining members of the body are infected more easily, as it is written: Every head is ailing, and every heart grieving; from the sole of the foot even to the crown there is no health in it." Therefore it is manifest that the devil—who goes about like a roaring lion, seeking whom he may devour—persuades the hearts of the common people to inflict detractions upon or accuse their own teachers and pastors, so that the ailing peoples, when their pastors do not hold their reins, may run wanton and rush into the depths, so that at least in this way they can be endangered. But damage to morals is very distant from damage to temporal things, since the latter are outside us, the former in us. And below: "I do not think that there is a worse evil

than for Christians to envy their priests." Hence also Felix II says [to the Bishops gathered in the Synod of Alexandria]:

C. XII. It is not lawful to persecute those rightly serving God.

Cease, says the holy Synod of Nicaea, and do not persecute those who rightly serve God, who with a sincere will keep the heavenly commandments of God and are subjected to our laws, because it is not fitting for carnal persons to persecute spiritual ones.

C. XIII. Subjects ought not to accuse their prelates.

Likewise Pope Anterus, [sole letter]. Bishops are sometimes depraved because of the deserts of the people, so that those who follow may fall more readily. When the head is ailing, the other members of the body are infected. Those who corrupt the life and morals of good persons are worse than those who plunder the substance and estates of others. Let everyone beware lest either his tongue or his ears itch, that is, lest either he disparage others or hear others disparaging. "While sitting," he says, "you spoke against your brother" by disparaging, "and against the son of your mother you placed a stumbling block," etc. Let every person abstain from detraction of the tongue and guard his words, and let him know that all the things he says about others will be judged by his own sentence. No one willingly reports to an unwilling hearer. Let the duty of every person be, most beloved, to preserve not only chaste eyes but also the tongue, and let another household never know through them what is done in anyone's household. Let all have the simplicity of the dove, lest they devise deceits against anyone, and the cunning of the serpent, lest they be overthrown by the plots of others. Likewise Pope Lucius, [sole letter, writing to the Bishops of Gaul and Spain]:

C. XIV. A good person does not desire to harm.

Not everyone who harms is wise.

C. XV. Detractors of bishops are worse than robbers.

Likewise Pope Anacletus, [letter III]. Those who corrupt the life and morals of teachers are worse than those who plunder the substance and estates of others. For the latter take away those things which, although ours, are outside us; but our detractors, the corrupters of our morals, or those who take up arms against us, properly deceive our very selves, and therefore they are justly infamous and deservedly made exiles from the Church. Therefore, pastors of the Church are often depraved because of the deserts of the people, so that those who follow may collapse more readily.

C. XVI. Concerning the same.

Likewise Alexander, [letter III]. It is the highest iniquity to disparage and accuse brothers. Hence it is written: "Everyone who disparages his brother is a homicide, and every homicide has no part in the kingdom of God." GRATIAN. It is therefore evident, as was set forth above, that carnal persons are prohibited from the accusation of spiritual persons, not spiritual persons from the accusation of carnal ones. Part II. § 1. Therefore, since criminals and infamous persons are prohibited from accusations, it must be seen whom the sacred authority of the canons calls infamous. Concerning these Stephen, Bishop of the Roman Church, writes to Hilary, [letter I, c. 1], saying:

C. XVII. Which persons are regarded as infamous.

We say that those persons are infamous who are marked by infamy for some fault, that is: all who cast aside the norm of Christian law and contemn ecclesiastical statutes; likewise thieves, the sacrilegious, and those ensnared by all capital crimes; violators of tombs also, and all who take up arms against the Fathers, who throughout the whole world are marked by infamy; likewise the incestuous, homicides, perjurers, abductors, sorcerers, poisoners, adulterers, those fleeing from public wars, those who seek to hold places unworthy of themselves, or who unjustly take away the resources of the Church, those who calumniate or accuse brothers and do not prove it, those who provoke the mind of princes to anger against innocent persons, and all who are anathematized or repelled from the Church for their crimes, and all whom ecclesiastical or secular laws pronounce infamous. All these persons, certainly, as well as slaves before lawful freedom, penitents, bigamists, those who serve the curia, those who are not sound in body, those who do not have a sound mind or understanding, those who are disobedient to the decrees of the saints, or those who are shown to be insane—all these, I say, ought neither to be advanced to sacred grades; nor can these persons, nor freedmen, nor suspect persons, nor those who do not possess right faith or worthy conduct, accuse the highest priests, nor can they in any way justly be received for an accusation or testimony.

C. XVIII. One who knowingly presumes to swear falsely is made infamous.

Likewise Pope Fabian. Part III. Whoever, knowing it, has perjured himself shall do penance for forty days on bread and water and for the following seven years, and shall never be without penance and never be received as a witness; nevertheless, after these things let him receive communion.

C. XIX. Ecclesiastical laws also repel accusers and persons whom secular laws do not admit.

Likewise Pope Eusebius, [letter I to the Bishops of Gaul]. Following the footsteps of the Fathers for the salvation of the servants of God, we remove from all persons whom public laws do not admit to an accusation the license to assail another; and let no accusations which are prohibited by secular laws be heard by ecclesiastical judges. GRATIAN. But although infamous persons are prohibited from the accusation of bishops, these persons are nevertheless not to be prohibited from the accusation of this man. For infamous persons are not prohibited from accusing heretics, as was evident above in the cause where the accusation of lesser persons against greater ones was discussed.

[C. XX.]

Likewise. Since those greater in knowledge and morals are prohibited from being accused by lesser persons, but equals are not prohibited from being accused by equals, nor lesser persons by greater ones, these persons are not to be prohibited from accusations against this man, since a heretic is lesser than a Catholic. But Augustine does not determine whether this is to be understood generally, [book IV *On Baptism against the Donatists*, c. 5], saying:

C. XXI. It is doubtful whether a knowing avaricious person or an unknowing heretic sins more gravely.

I ask, therefore, who sins more gravely: one who has unknowingly fallen into heresy, or one who knowingly has not withdrawn from avarice, that is, from idolatry? According to that rule by which the sins of those who know are set above sins of ignorance, the avaricious person overcomes in

wickedness through knowledge. But if perhaps the magnitude of the wickedness in heresy accomplishes what the commission of one who knows accomplishes in avarice, the unknowing heretic is made equal to the knowing avaricious person. Likewise, [c. 20 of the same book]: § 1. Whether we ought to set a Catholic of the worst morals above some heretic in whose life people find nothing to rebuke apart from the fact that he is a heretic, I do not dare to hasten a sentence. Part IV. GRATIAN. But this statement of Augustine and that statement concerning the accusation by infamous persons must be understood of those who are established to be heretics, not of those who deny that they have fallen into heresy. But this man, appearing religious in all things, while he denies that he was ever infected with the stain of heretical communion, himself repels infamous persons and others of this kind from his accusation. § 1. Although these things appear to rest upon reason, they are nevertheless understood to be vain by the example of injured majesty; for, when an accomplice in an undertaken faction is admitted to an accusation of that crime, it is not asked whether to think against the prince's life is to injure his majesty, but whether someone has treated concerning his death. Hence Emperors Honorius and Arcadius are read to have written in the ninth book of the Code, title *On the Julian Law of Majesty*, [law 5]:

[C. XXII.]

"If anyone has entered into a wicked faction with soldiers or private persons, even with barbarians, or has received or given the oath of that faction itself, or has devised the death of illustrious men who take part in our counsels and consistory, or even of senators—for they too are part of our body—or, finally, of anyone who serves us—for the laws willed the intention of wickedness to be punished with the same severity as its effect—let him indeed, as one guilty of injured majesty, be struck with the sword, all his goods being assigned to our fisc. But as for his sons, to whom by special imperial clemency we grant life—for they ought to perish by their father's punishment, since in them examples of the paternal, that is, hereditary, crime are feared—let them be regarded as strangers to the succession of all their nearest relatives; let them take nothing by the testaments of strangers; let them be perpetually needy and poor; let their father's infamy always accompany them; let them never come to any honors or to any oaths at all; finally, let them be such that, while they are made squalid by perpetual need, death may be a consolation to them and life a punishment. Finally, we command that those who ever attempt to intercede before us for such persons are also to be marked by infamy without pardon. § 1. Certainly, if any of these persons at the beginning of the undertaken faction, kindled by zeal for true praise, has himself betrayed the faction, he shall be presented by us with both a reward and an honor. But one who has participated in the faction, if late, yet while the secrets of its counsels are still unknown, he has disclosed them, shall be regarded as worthy only of absolution and pardon." GRATIAN. Moreover, an accusation of simony ought to proceed after the pattern of injured majesty, as Emperor Leo is read to have decreed in book I of the Code, title *On Bishops and Clerics*, law *If Anyone*—it ought to proceed. This must be understood concerning the accusation, not concerning the penalty. Hence Emperors Valentinian, Valens, and Gratian in book IX of the Code, title *On the Julian Law of Majesty*, [law *Let No One*]:

[C. XXIII.]

"Let absolutely no one to whom, without our having been consulted and without our knowledge, the torments of cords are applied be prohibited from using the defense of military service, birth, or

dignity, with only the case of injured majesty excepted, in which alone the condition is equal for all." GRATIAN. But since all those who can accuse concerning the crime of injured majesty are admitted in an accusation of simony, it is established that, just as there no doubt is raised concerning the crime of injured majesty, but whether the defendant committed it, so also here heresy is not denied, but the accused is assailed as to whether he committed heresy.

Question II

GRATIAN. But the question whether, if a bishop wishes to turn an accusation against the accuser, credence is to be given to his simple assertion is easily resolved if the authority of the holy Fathers is diligently inspected. For, as the holy Fathers determine, credence is to be given to no person's confession, however practiced that person may be, unless he adduces competent proofs. Hence it is read in the Fourth Council of Carthage, [c. 29]:

C. I. A bishop who charges a crime against someone shall prove in a synod what he charges.

If a bishop has imposed a criminal charge upon a cleric or layman, let him be brought to proof in a synod. GRATIAN. But it is objected: If he knows himself alone to be aware of another's wickedness, he cannot prove it by witnesses. What, therefore, is then to be done by him is determined thus from the Council of Vaison, [I, c. 8]:

C. II. A bishop shall not bring forth what he cannot prove.

If the bishop alone knows himself to be aware of another's wickedness, as long as he cannot prove it, let him bring forth nothing, but let him labor with the man by secret corrections for his compunction. But if perhaps the man, after being corrected, has become more obstinate and has thrust himself into public communion, even if the bishop lacks proof in reproving the one whom he judges guilty, that man, uncondemned—although before those who know nothing he may be ordered, on account of the authority of the greater person, to withdraw for a time—shall nevertheless, as long as the bishop can prove nothing, remain in the communion of all except the one who judges him guilty.

C. III. Concerning a bishop who says that someone confessed his own crime to him alone.

It was resolved that, if at any time a bishop says that someone confessed his own crime to him alone, and that person denies it, the bishop shall not think it pertains to his injury that he alone is not believed. And if, because of a scruple of his own conscience, he says that he is unwilling to communicate with the man who denies it, let the other bishops not communicate with that bishop for as long as his own bishop has not communicated with the excommunicated man, so that the bishop may take greater care not to say against anyone what he cannot convict by other proofs.

Question III

GRATIAN. It is not lawful, however, for anyone to seek the judgment of the archbishop of another province.

Hence Gregory says, [response IX to Augustine, Bishop of the English]:

C. I. It is not lawful for anyone to judge another's parishioner.

It is written in the law: "When passing through another's harvest, you ought not to put in a sickle, but to rub the ears with your hand and eat." For you ought not to put the sickle of judgment into that crop which is seen to have been entrusted to another; but through the affection of a good work strip the Lord's grains of the chaff of their vices, and by admonishing and persuading, as though by chewing, convert them into the body of the Church.

C. II. How many cities each province is to have.

Likewise Pope Pelagius [II, letter VIII] to all Bishops. Know that a province is established which has ten or eleven cities, and one king, and as many lesser authorities under him, and one metropolitan, and ten or eleven other suffragan bishops as judges, to whose judgment all cases of bishops, of the other priests, and of cities are to be referred, so that they may be justly decided by them all with a concordant voice, unless an appeal has been made to a greater authority by those who are to be judged. Hence it is not fitting that each province be degraded or dishonored, but let it have among its own people judges, priests, and bishops, each, of course, according to their own orders; and whoever has a case shall be judged by his own judges and not by outsiders, that is, by the just judges of his own province and not by strangers, unless—as has already been touched upon—an appeal has been made by those who are to be judged.

C. III. Let every bishop subject himself to the judgment not of others, but of his own primate.

Likewise Pope Nicholas. Finally, if Suffredus knew that there was in him such a crime by which he could rightly be deprived of the episcopate, or perhaps felt himself weighed down by an infirmity by which, being impeded, he could benefit none of his neighbors through his prelacy, he ought to have awaited the judgment of his own primate and not that of the bishops of other dioceses. But if any ambiguity or perhaps any contention concerning his examination or renunciation of the episcopate had arisen, it would have been fitting for it to be referred according to custom to the apostolic see, and all ought in these matters to have awaited our decrees entirely. Because this was omitted, as we have grieved until now, I vehemently implore your glory, most beloved by me, that the aforesaid Bishop Suffredus be restored to his own episcopate; and if he did anything deserving of rebuke, it shall afterward be determined by either correction or a worthy punishment.

GRATIAN. There is nevertheless a case in which a bishop can excommunicate the parishioner of another. Hence in the Council at Compiègne, [c. 5]:

C. IV. When a bishop can excommunicate another's parishioner.

It was resolved for the common benefit that no bishop take it grievously if another bishop has excommunicated his parishioner for a cause of depredation.

[PALEA.

C. V. Concerning the same.

Likewise from the Council of Meaux, c. 2. Concerning those who have a benefice or inheritance within a parish, but are parishioners of another bishop, and who journey from place to place and commit rapine and depredations, it was resolved that they be excommunicated and not depart from the diocese before they worthily amend what they have perpetrated. Their excommunication is to be signified to their lord and to their own bishop, lest he receive them before they return to the place where they committed the rapine and there amend all things fully.]

Question IV

GRATIAN. Moreover, whose judgment he is to seek if the chosen judges have begun to disagree among themselves is found to have been determined thus in the Council of Laodicea, [c. 14]:

C. I. By whom a sentence is to be rendered when coprovincial bishops disagree.

If any bishop has been criminally accused in the judgment of bishops, but it happens that the bishops of the province who have assembled hold diverse opinions, some indeed pronouncing him innocent and others guilty, in order to cut away a controversy of this kind it was resolved by the holy synod that the metropolitan bishop of another neighboring province be called in, and certain other bishops with him, who, sitting together, shall settle whatever the question may be, so that the judgment promulgated by the bishops of one province may thereby be firm.

C. II. When the chosen judges have disagreed among themselves concerning the sentence, the archbishop shall be called from a neighboring province.

Likewise from the Council of Pope Martin. If any bishop is judged in any matters and sees that those bishops who are in his province differ among themselves in judgment, so that some appear to justify the man who is judged and others to condemn him, for the determination of this dissension it was resolved by the holy synod that another metropolitan bishop be summoned from a neighboring province, so that through him what has been resolved according to the right canon may be confirmed.
GRATIAN. Unless that same province has a primate, to whom affairs which cannot be terminated by the metropolitan are to be referred. Hence Pope Boniface to the Bishops of Gaul:

C. III. Affairs which the metropolitan cannot resolve shall be referred to the primate.

If among the bishops of the same council a doubt has arisen concerning ecclesiastical law or other affairs, first let their metropolitan, considering the matter with certain others in the council, adjudicate it; and if both parties do not acquiesce in the things adjudged, then let the primate of the region hear the matter between them and determine what is consonant with the ecclesiastical canons and our laws, and let neither party be able to contradict his vote.

[PALEA.

C. IV. Concerning the same.

Likewise Pope Alexander. If a metropolitan, after an appeal has been made to him by any coprovincial bishop in the bishop's own case, has delayed hearing him, let him have license to prosecute his business in the next synod; and whatever has been enacted with justice by his coprovincials ought to be observed.] GRATIAN. But if he has been condemned by the concordant sentence of all the coprovincials, the censure shall remain immovable against him. Hence it is read in the Council of Laodicea, [c. 15]:

C. V. A bishop who has received a concordant sentence from the bishops of his province will not be able to be judged by others.

If any bishop criminally accused has received one concordant sentence from all the bishops who are within the province, he will not be able to be judged further by others, but the sentence put forth by all ought to remain firm and ratified concerning him as a fitting sentence. GRATIAN. It must be understood, however, unless an appeal has been made to a judge of greater authority. For then the sentence, dissolved through the appeal, does not obtain firmness. Hence Pope Nicholas says, [in the letter to King Charles which begins, "It Never Produces Grief"]:

C. VI. What has once been determined may not be reconsidered, except where there is a greater authority.

What has once been well determined and decided with oaths interposed ought not to be reconsidered by any repetition, unless perhaps where there is a greater authority.

C. VII. In the renewal of a judgment the memory of blessed Peter is to be honored.

Likewise from the Council of Sardica, [c. 4]. Bishop Hosius said: "But if any bishop has been adjudged in some case and thinks that he has a good case, let another judgment be renewed. If it pleases you, let us honor the memory of Saint Peter the Apostle, so that those who examined the case, or also other bishops who dwell in the neighboring province, may write to the Roman bishop. And if he has judged that the judgment is to be renewed, let it be renewed and let him give judges. But if he has approved the case as being of such a kind that the things which were done should not be stirred anew, the things which the Roman bishop decrees shall be confirmed. Therefore, if this pleases all, let it be enacted." The synod responded: It pleases us. In book IV of the Code, title *On Proofs*: A plaintiff who declares that he is unable to prove what he asserts does not bind the defendant by a necessity of demonstrating the contrary, since by the nature of things there is no proof of a fact for one who denies it.

Question V

GRATIAN. That, when the accuser fails, the defendant is not to be compelled to proof is proved by the authority of Gregory, who, [book V, letter 25], writing to Maximus, says:

C. I. The burden of proof does not lie upon the defendant.

As for your request that we ought to direct a person there through whom there can be proof concerning the things that are said, it would in some measure be excusable if legal reason ever

imposed a necessity of proof upon the one who is accused. But since this burden lies not upon you but upon the accusers, do not fail to come to us without delay, as we said before. GRATIAN. The accused ought to prove not his denial but his exception:

[C. II.]

GRATIAN. This, however, is to be observed when public report does not vex the defendant. For then, by the authority of the same Gregory, in order to remove scandal, the defendant ought to purge his reputation.

Causa VII

GRATIAN. A certain bishop, weighed down by a long illness, asked that another be substituted for him; the Supreme Pontiff assented to his prayers and granted him what he had asked. But afterward that same bishop recovered, and he desires that what he had previously done be rescinded; he raises a question against the one who had joined him and reclaims his chair as though it were owed to him. (Qu. I.) Here it is first asked whether, while a bishop is living, another can be ordained in the same church. (Qu. II.) Second, whether this man can reclaim the chair which another received through his intercession.

Question I

GRATIAN. Part I. That, while a bishop is living, another cannot be placed or ordained over him was determined by the council celebrated at Auvergne, in which it is read: "Let no other bishop be placed or ordained over a bishop while he is living, unless perhaps into the place of one whom a capital fault has cast down."

C. I. A bishop shall not be deprived of his honor because of bodily affliction.

Likewise from the Register of Pope Gregory, [book IX, letter 41], to Anatolius, Deacon of Constantinople. Your love wrote to me that I should command a bishop to succeed my most reverend brother John, bishop of Justiniana Prima, because of the sickness of the head from which he suffers, lest perhaps, while that city does not have the rights of a bishop—which God forbid—it perish at the hands of the enemy. But the canons nowhere command that a bishop succeed because of the sickness of a bishop, and therefore it is unjust that, if a bodily affliction has assailed him, the sick man be deprived of his honor. But it is to be proposed that, if anyone in governance is sick, such an administrator be sought for him who can conduct all his care and preserve his place in the governance of the Church, without his being deposed, so that neither is almighty God offended nor is the city found to have been neglected.

C. II. Affliction ought not to be added to those scourged by the Lord.

The same, [book II], in the letter [5] to Candidus. When a bodily blow threatens, whether it happens for purification or for vengeance, God's judgment in this matter is unknown; and therefore affliction ought not to be added by us to those scourged, lest the offense of their fault—which God forbid—look back upon us.

C. III. One ought not to be deprived of his place because of infirmity.

Likewise Gregory to Bishop Clementius, Primate of Byzacena. Although the text of the petition submitted to you explains the complaint of Adeodatus, bearer of the present letters, who says that he was improperly expelled from the place of his priesthood, nevertheless we have judged that it should be unfolded a little more openly. For he asserts that our brother and fellow bishop Quincianus granted him leave from his place in order to arrange certain affairs of his, and that because of sickness he was absent from his church for a period of two months; and he asserts that our aforesaid brother, seizing upon the occasion of this matter, ordained another priest there in his place. Therefore, we exhort your fraternity to investigate his case solicitously and rigorously; and if you find that he was absent from his church because of manifest sickness, as is said, permit no prejudice to be generated against him from the ordination of another priest, but cause him to be restored to his place without any doubt. And below: § 1. But we specially admonish your love that, if his representation was true and he has been restored to his order, you ought to be carefully and rigorously solicitous concerning the priest who was ordained in his place. And if indeed he came to that order without any payment, so that he could not have fallen into the simoniacal heresy, we wish him to be ordained to any other vacant church. But if anything of this kind—which may the Lord avert—has been found in him, let him be deprived even of the order of priesthood, which he is proved to have received not for the cause of fulfilling the necessity of the Church but from ambition alone.

C. IV. Pontiffs are not to be cast aside because of infirmity or sickness, nor are others to be substituted in their place.

Likewise Nicholas to Alwin, Archbishop of Salzburg. Pontiffs who are occupied by some infirmity or sickness are not to be cast aside, nor ought others to be consecrated in their place unless they have been taken from this light. But if they complain concerning the ministry conceded to them, let priests fulfill the things which are lawful. In those things, however, which it is not lawful for them to presume, let the assistance of neighboring bishops be substituted until health is recovered, and let them perform this with zealous caution, lest ambition arising from presumption sprout through the occasion of necessity. But bishops who undertake the care and solicitude of the Lord's flock ought not to withdraw from their administration, so that the beauty of the talent received may not be effaced, but may be beneficially increased and tripled through their striving.

C. V. While a bishop is living, another cannot succeed him.

Likewise from a letter of Cyprian, Bishop and Martyr. Cornelius was made bishop by the judgment of God and His Christ, by the testimony of almost all the clerics, by the vote of the people who were then present, and by the consent of ancient priests and good men, when no one had been made before him, when the place of Fabian—that is, the place of Peter and the grade of the priestly chair—was vacant. Once that place had been occupied and confirmed by God's will and by the agreement of us all, whoever should thereafter wish to be made a bishop must be made one outside, and one who does not hold the unity of the Church does not have ecclesiastical ordination. Whoever he may be, although greatly boasting of himself and claiming very much for himself, he is profane, he is an outsider, he is outside. And since there cannot be one after the first, whoever has been made after the one who alone ought to be bishop is now not the second, but no bishop at all.

C. VI. One who has crept into the place of a living bishop is not a bishop.

Likewise from the same. Novatian is not a bishop: after Cornelius was made bishop in the Church by sixteen fellow bishops, Novatian strives through ambition to be made by deserters an adulterous and extraneous bishop. And although there is one Church from Christ throughout the whole world, divided into many members, and likewise one episcopate, diffused through the concordant multitude of many bishops, that man, after God's tradition and after the connected and everywhere joined unity of the Catholic Church, attempts to make a human church; and he sends his new apostles through very many cities so that he may establish certain recent foundations of his own institution. And although bishops have long since been ordained throughout all the provinces and individual cities, ancient in age, sound in faith, proved under pressure, and proscribed in persecution, that man dares to create other pseudo-bishops over them, as though he could either traverse the whole world by the obstinacy of a new attempt or tear apart the fabric of ecclesiastical order by the sowing of his discord, not knowing that schismatics always burn hot at their beginnings but cannot have growth or increase what they began unlawfully, but immediately fail together with their depraved rivalry. And below: § 1. Therefore, one who observes neither the unity of the Spirit nor the bond of peace, and separates himself from the bond of the Church and from the college of priests, can have neither the power nor the honor of a bishop, since he wished to have neither the unity nor the peace of the episcopate.

C. VII. One who does not have peace with the bishop is not in the Church.

The same to Puppianus, [in the same book IV, letter 6]. You ought to know that the bishop is in the Church and the Church in the bishop, and that, if anyone is not with the bishop, he is not in the Church; and that those who, not having peace with the priests of God, creep in and believe that they secretly communicate among certain persons flatter themselves in vain, since the Church, which is one and catholic, has not been torn or divided.

C. VIII. One ought not to yield his own right.

The same, [to Jubaianus]. Holy Scripture declares how dangerous it is in divine matters for anyone to yield his own right and power, since Esau thereby lost his rights of primacy and could not afterward receive what he had once yielded.

C. IX. Those who withdraw from bishops and tear apart the unity of the Church acquire perdition for themselves.

The same, [book I, letter 6 to Magnus]. Finally, divine Scripture in the books of Kings declares how inseparable is the sacrament of unity, and how those who make a schism and, after abandoning the bishop, establish another pseudo-bishop for themselves outside are without hope and acquire the greatest perdition for themselves from God's indignation. There the ten tribes were torn away from the tribe of Judah and Benjamin and, after abandoning their own king, established another for themselves outside. "And the Lord," it says, "was indignant with all the seed of Israel, and He destroyed them and gave them over to plunder until He cast them away from His face, because Israel was scattered from the house of David, and they established for themselves Jeroboam, son of Nebat, as king." It said that God was indignant and that He gave them over to perdition because, scattered from unity, they had established another king for themselves. And so great was the Lord's indignation against those who made the schism that, even when a man of God had been sent to Jeroboam to

reproach him with his sins and foretell the vengeance to come, he was forbidden to eat bread and drink water among them. When he did not observe this and dined contrary to the Lord's command, he was immediately struck by divine censure, so that, while returning thence, he was killed on the road by a lion's attack and bite. § 1. But still in His Gospel the Lord manifests a greater light of His meaning: those same persons who had then torn themselves away from the tribe of Judah and Benjamin and, after abandoning Jerusalem, had withdrawn to Samaria were numbered among false prophets and gentiles. For when He first sent the disciples into the ministry of salvation, He commanded and said: "Do not go into the way of the gentiles, and do not enter into the cities of the Samaritans." Sending them first to the Jews, He commands that the gentiles still be passed by. But by adding that the city of the Samaritans also ought to be omitted, where the schismatics were, He shows that schismatics are equated with gentiles. And a little later: § 2. But the fact that they are said to know the same whom we know as God the Father, the same Son, and the same Holy Spirit cannot assist such persons. For Korah, Dathan, and Abiram, together with Aaron the priest and Moses, knew the same God; living by an equal law and religion, they invoked the one and true God who was to be worshiped and invoked. Nevertheless, because they transgressed the ministry of their place and against Aaron the priest—who had received the lawful priesthood by God's favor and ordination—claimed for themselves license to sacrifice, when struck divinely they immediately paid penalties for their unlawful attempts; nor could the sacrifices irreligiously and unlawfully offered contrary to the law of divine disposition be valid and profitable. The censers themselves also, in which incense had been offered unlawfully, were melted by the Lord's command and purified by fire and drawn out into beaten plates and affixed to the altar, so that they might not thereafter be in use by the priests, but rather present to posterity a memory of divine indignation and vengeance for their correction, according to what divine Scripture says: "A memorial," it says, "for the children of Israel, so that no stranger who is not of the seed of Aaron may approach to place incense before the Lord, lest he be like Korah." And yet those men had not made a schism or, going outside, rebelliously risen in an impudent and hostile manner against the Lord's priests, which those who now tear apart the Church and rebel against the peace and unity of Christ attempt to do, establishing a chair for themselves, assuming primacy, and claiming the license to baptize and offer, etc.

C. X. One who invades the place of a living man is not to be defended.

Likewise Leo IV to Nomenoe, Duke of Brittany. You ought no longer, on account of the gifts of any reward, to defend the thief and robber that we perceive Gislard to be in the see of Nantes, who did not fear to usurp the place of a living man, which was not lawful.

C. XI. A bishop is not permitted to abandon his church.

Likewise Pope Evaristus, [letter II], to all Bishops. Just as a man ought not to commit adultery against his wife, so neither ought a bishop to commit adultery against his church, that is, by abandoning the one to which he was consecrated. And just as a wife is not permitted to abandon her husband so that, while he is living, she may join herself to another in marriage and thus commit adultery against him, although her husband has fornicated, but according to the Apostle she ought either to be reconciled to her husband or remain unmarried, so a church is not permitted to abandon her bishop or separate herself from him so that, while he is living, she may receive another; but let her either have him or remain unmarried, that is, let her not receive another bishop while her own is

living, lest she incur the crime either of fornication or of adultery. But if she has committed adultery, that is, if she has joined herself to another, has brought another bishop over herself, or has caused or desired him to be bishop, let her either be reconciled to her own bishop through the most severe penance or remain unmarried. § 1. A bishop, however, ought in season and out of season, and without interruption, to teach his church and prudently to govern and love her, so that she may abstain from vices and be able to attain eternal salvation. And she ought to receive his teaching with such reverence and to love and cherish him as a legate of God and herald of truth. GRATIAN. Behold, by these authorities it is plainly shown that, while a bishop is living, another cannot be ordained over him, not even because of his sickness. But that statement of Gregory must be understood when the one who is sick does not ask for another to be substituted for him. Otherwise, when anyone weighed down by either old age or infirmity cannot administer the office undertaken, if he has asked for another to be substituted for him, it can reasonably be done. Hence it follows in the same chapter: "But if that same John has perhaps asked on account of his affliction that he ought to be released from the honor of bishop, it is to be granted when he submits the petition in writing; otherwise we are unable to do it." Hence also blessed Augustine received the episcopal chair while his bishop was not yet dead but weighed down by old age. Hence it is read in the [sole] letter of Paulinus to Romanianus:

C. XII. Augustine did not so much succeed as accede.

But we wrote that not only this was to be a cause for rejoicing, that Augustine had received the episcopate, but that by God's grace he had merited this care for the African Church, so that it might receive heavenly words through Augustine's mouth; for he was advanced to the greater grace of the Lord's gift in a new manner and was consecrated in such a way that he did not succeed the bishop in the chair, but acceded to him. For while Valerius, bishop of the church of Hippo, was still alive, Augustine was his fellow bishop. GRATIAN. This same thing is proved by the authority of blessed Gregory, who substituted another for the bishop of Rimini when he was suffering pain of the head, writing thus in his Register, [book VII, indiction 2, letter 49], chapter 238:

C. XIII. Another can be substituted for a bishop weighed down by infirmity.

Your fraternity learned long ago how, because bodily affliction impeded the priest ordained by us, as is known, the church of Rimini has thus far been destitute of pastoral and priestly governance. Moved by the prayers of the inhabitants of that place, we have often exhorted him that, if he felt himself to have improved from that same affliction of the head by which he was detained, he should return to his church with God's aid. After intervals had been granted, he has been awaited during these four years. While we were exhorting him more insistently, both when clerics or citizens came here and when they pressed us with prayers, that, if he was able, he should return with them with the Lord's aid, he sought from us by a written petition that, because on account of the same affliction by which he is detained he was entirely unable to rise to the governance of that church or the office undertaken, we ought to ordain a bishop for Christ's Church. Hence, because the enjoined care and solicitude of all the churches constrains us lest pastoral custody be absent any longer from the flock of the faithful, compelled by their prayers and by this man's renunciation arising from his inability, it seemed to us that a bishop ought to be ordained for that same church of Rimini; and, after precepts had been given according to custom, we did not cease to admonish the clergy and people of that same

church to come together with concordant providence to choose a bishop for themselves. Therefore, we exhort your fraternity to cause the man whom all have chosen with one consent to be summoned to you, as they themselves are known to have requested from us. Examine him by a careful examination in all respects; and if, with the Lord's aid, the things contained in the text of the Heptateuch have in no way been found in him, and if his life has also pleased you upon the report of faithful persons, send him to us with the document of your decree, with a letter of attestation also added, so that, with the Lord disposing, he may be consecrated by us as bishop of that same church.

C. XIV. Concerning the same.

Likewise from the same chapter 232, to Bishop Eleutherius. Although what we say is very grievous to us and reproves us through brotherly compassion rather than permits us to determine anything concerning what has been heard, nevertheless the solicitude of the governance undertaken strikes our heart with an urgent goad, so that with great care we may provide for the churches, lest any benefit of theirs be able to perish. It has therefore come to us, through the reports of certain persons, that a certain bishop has incurred so severe an affliction of the head that what he is accustomed to do with his mind deranged is to be heard with groaning and weeping. Therefore, lest, while the shepherd is languishing, the flock—which God forbid—be exposed to be torn by the teeth of the plotter, or the benefits of that church perish, it is necessary for us to deliberate with cautious provision. And therefore, because the necessity of infirmity, not a crime, withdraws the living bishop from his office, no reason permits another to be ordained in his place unless he refuses it; but if he is accustomed to have intervals in his illness, let him himself, upon giving a petition, confess that he is no longer able to rise to this ministry because infirmity overthrows him, and let him request that another be ordained in his place. When this has been done, by the solemn election of all let another who shall have been worthy be ordained bishop, yet in such a way that, for as long as life holds that bishop in this world, the support owed to him is supplied from the same church. But if at no time he returns to the functioning of a sound mind, a faithful person of approved life is to be chosen, one who can be suitable for the governance of the church, take thought for the benefit of souls, bind the restless under the bond of discipline, exercise care for ecclesiastical affairs, and show himself mature and effective in all things; and if he survives the bishop who is now ill, he ought to be consecrated in his place. PART II. GRATIAN. But lest, when priests are suddenly seized by afflictions of this kind, an office begun remain unfinished, it has been established that a priest, whether singing psalms or offering sacrifice, have others with him who, if a case of this kind intervenes, may be able to complete the mysteries begun. Hence in the Eleventh Council of Toledo, [c. 14]:

C. XV. Let every priest offering sacrifice have a neighboring priest who may complete the sacraments begun if some necessity befalls him.

With each person keeping in mind that saying of the divine oracle in which it is written, "Woe to one who is alone, because, when he falls, he has no one to raise him up," it must be most greatly feared and guarded against by us lest, at those hours and times in which psalms are sung or sacrifice is offered to the Lord, a dangerous affliction or any bodily malady befall anyone attending alone to the divine offices, one which either causes the body suddenly to collapse or confounds the mind by derangement or terror. Therefore, guarding against cases of this kind, we have thought it necessary to establish that, wherever an abundance of time, place, or clergy affords it, whoever is singing to God and offering sacrifice have behind him a helper from nearby as a solace, so that, if by some accident

the one who approaches to complete the offices is disturbed or dashed to the ground, he may always have behind him one who will execute his function without fear.

C. XVI. If a priest has been forestalled by necessity, let the sacraments begun be completed by another.

Likewise from the Eighth Council of Toledo, [c. 2]. Let nothing contrary to the statute of the order be presumed by an act of rashness, nor let those things which are held in the highest veneration be dissolved by any presumption, since they were commanded to be done for this purpose alone: that they may not be known to have been interrupted, lest through the occurrence of illness nature be deprived of the strength of salvation. Therefore, not only is provision made for human frailty, but care is also taken for the sacred ministries of God with solicitude. We have therefore judged it fitting that, when the holy mysteries are consecrated by priests during Masses, if an occurrence of any illness happens by which one cannot complete the ministry of consecration begun, it shall be permitted to another bishop or priest to carry out the consecration of the office begun. For nothing else is fitting for the completion of mysteries that have been initiated except that they be completed by the blessing either of the priest who began or of one who follows, because they cannot appear perfected unless they are completed according to the order of perfection. For since we are all one in Christ, difference forms nothing contrary where the unity of faith makes present the efficacy of prosperity. And let the clerics of every order not doubt that this provision is indivisible for them, but, as was stated before, let others gladly succeed those preceding them for the sake of completion. Nevertheless, let not what is provided because of the infirmity of nature be turned to the ruin of presumption: let no one celebrate Masses after taking food or any drink, however little; let no minister or priest, after he has begun, presume to leave the offices wholly incomplete without a manifest occurrence of illness. If anyone rashly presumes this, he shall sustain a sentence of excommunication. PART III. GRATIAN. Behold, it is plainly shown that, at the request of a bishop weighed down by infirmity, another may be substituted, also through the prayers of the people. But to one weighed down by old age there ought to be given not a successor but a coadjutor, who will succeed to his place of governance when he dies. Thus Augustine is said to have acceded to, not succeeded, the bishop of the people of Hippo. Hence Pope Zacharias also writes to Boniface, Archbishop of Mainz:

C. XVII. A coadjutor is to be given to one weighed down by old age, who shall succeed him when he dies.

You requested that, with our counsel, because old age and bodily weakness have come upon you, if you can find another, you ought to place him in the same see over which you preside in place of your person. But, with God as helper, we offer this counsel to your holiness: that, for the salvation of rational souls, with Christ as patron, you in no way leave the see of the church of Mainz which you hold. But if the Lord, in accordance with your petition, shall give a perfect man who can have solicitude and care for the salvation of souls, you will ordain him bishop in place of your person, and he will be one who seeks out and strengthens the church of God in every place in the Gospel entrusted to you and in bearing the ministry of Christ. Likewise: § 1. If divine clemency wills him to survive after the day of your passing, if you know him to be suitable and it has been determined in your will, at that hour when you know that you are about to migrate from the present world, designate him your successor in the presence of all, so that he may come here to be ordained. We do

not allow to any other the thing which, under the compulsion of charity, we have judged should be granted to you. Likewise: § 2. But concerning him whom you said you wished to establish as your successor, so that at your command he might be elected bishop in your place, we do not allow this under any reasoning, because it is shown to be contrary to every ecclesiastical rule and the institutions of the Fathers; but we wish him to minister to you and to be your helper in the Gospel of Christ. § 3. For it is manifest that it would be exceedingly blameworthy for us to substitute another for you while you are living; but we admonish this: that you not cease to pray that God grant you that successor who can be pleasing to Him and be able to govern the people irreproachably.

C. XVIII. Not a successor but a coadjutor is given to a living bishop.

Likewise Pope Pelagius to the Clergy of Narni. Because our brother and fellow bishop John, persuaded by concern for ecclesiastical utility and, with praiseworthy consideration, by the simplicity of his nature, confesses himself by no means suitable for exercising the care of governing the patrimony or for preserving ecclesiastical discipline, he requested for this reason that the person of the priest Constitutus be applied to him for carrying these things out, so that, with what is necessary being arranged by competent solicitude, nothing indecent or useless may be permitted to be done. And therefore by the present command we instruct you that, with reverence first preserved toward the aforesaid bishop, which it befits us to show blamelessly, you offer competent obedience in all things pertaining to the service of divine worship or which care for ecclesiastical utility has urged should be performed, so that, resisting his arrangements in nothing with a contumacious spirit, but rather fulfilling with a competent effort of your vigilance those things which he has admonished should be done for ecclesiastical utility, with these matters thus arranged both your customary stipends may be supplied to you and whatever is necessary in the patrimony of the aforesaid church or in recovering the things pertaining to it may be completed. GRATIAN. But that statement of Cyprian is to be understood concerning heretics who strive to usurp the churches of Catholics for themselves. § 1. But that statement of Pope Evaristus is to be understood when neither an unavoidable necessity—of persecutors, namely—nor an apostolic or regular transfer, but ambition alone compels a bishop to pass from church to church. § 2. Hence, when at the beginning of his chapter he had said, "A bishop ought not to leave his church," he afterward added: "Apart from unavoidable necessity or an apostolic or regular transfer, and to join himself to another through a desire for advancement."

PART IV. § 3. For whoever, because of ambition, has despised the modest size of his own church and has wished to transfer to a greater church ought to be recalled to his own. But if he has despised returning, let him lack both the other and his own. Hence it is read in the Council of Nicaea, [c. 15]:

C. XIX. A bishop or any cleric ought not to pass to another church after leaving his own.

A bishop or the remaining orders ought not to migrate from city to city; let neither bishop, nor priest, nor deacon pass over. But if anyone after the determination of the holy and great council has attempted to do any such thing and has bound himself to an undertaking of this kind, let this deed be regarded as altogether void, and let him be restored to the church of which he was ordained bishop, priest, or deacon.

C. XX. Let a bishop who despises residing in his own church be assigned to a monastery.

Likewise Gregory to the Subdeacon Anthemius, [book V, letter 23]. It has come to us that Pimenium, bishop of the city of Amalfi, is not content to reside in his church but wanders outside through various places. Therefore by this authority we instruct you that he not presume to do this henceforth but reside in his church in priestly fashion. If, after your threat, you find that he has not corrected himself, take care to assign him to a monastery and by every means report it to us, so that you may learn by another command from us what you ought to do.

C. XXI. No bishop is permitted to leave his principal chair and betake himself to another church.

Likewise from the Fifth Council of Carthage, [c. 100]. It was resolved that no one have the power, after leaving his principal chair, to betake himself to some church established in his diocese, or, by remaining on his own property longer than is fitting, to neglect the care or attendance of his own chair.

C. XXII. An interim administrator is not permitted to retain the chair to which he was given.

Likewise from the same, [Fifth Council of Carthage, c. 8]. It has been established that no interim administrator be permitted to retain the chair to which he was given as interim administrator through any popular zeal or seditions, but that he take care to provide them a bishop within a year. But if he has neglected this, after the year has elapsed let another interim administrator be assigned.

C. XXIII. Let clerics who have left their own church and refuse to return to it be excommunicated.

Likewise from the same. But if any, acting without regard for God, not having the fear of God before their eyes and not observing the ecclesiastical statutes, have withdrawn from their church, whether a priest or a deacon, or those placed in any ecclesiastical order whatsoever, they ought not to be received in another church, but must by every necessity be compelled to return to their own church. But if they persist, they ought to be excommunicated.

C. XXIV. Concerning the same.

Likewise from the Council of Antioch, [c. 3]. If any priest, deacon, or any cleric, after deserting his own church, has believed that he should pass to another, and there, to which he has migrated, gradually attempts to remain permanently, he ought not to minister any longer, especially if he has been exhorted by his own bishop to return. But if after the summons of his bishop he has not obeyed but has persevered in disobedience, he ought by every means to be deposed from his office and never afterward to have hope of restoration. But if another bishop receives one deposed for this fault, he too will merit the penalty of rebuke from the common synod as one dissolving ecclesiastical laws.

C. XXV. A bishop is not permitted to leave his own church and pass to another.

Likewise from the same, [Council of Antioch, c. 21]. A bishop ought not to pass from diocese to diocese, neither if he has thrust himself in, nor if he has been violently drawn by the people, nor even

if this is advised to him by the bishops; but he ought to remain in the church of God which he obtained from the beginning and not migrate from it elsewhere, in accordance with the rule long ago established on this matter by the Fathers.

C. XXVI. Concerning the same.

Likewise from the Council of Chalcedon, [c. 5]. On account of those bishops or clerics who pass from city to city, it was resolved that the determinations given by the holy Fathers possess their proper force.

C. XXVII. The congregations of another are not to be usurped by a bishop.

Likewise from the Third Council of Carthage, [c. 20]. It was resolved that the congregations of another be usurped by no bishop, nor let any bishop overstep into the diocese of his colleague.

C. XXVIII. A bishop is not permitted to ordain the clerics of another or consecrate altars.

Likewise Anacletus. A bishop ought not to intrude into another's diocese to ordain another's clerics or consecrate altars. But if he has done so, those whom he ordained being removed and only the consecration of the altar remaining, the transgressor of the canons shall cease from the celebration of Masses for a year.

C. XXIX. On solemn days a cleric ought not to be absent from his church.

Likewise from the Council of Agde, [c. 64]. If anyone established among the clergy has been absent from his church on solemn days—that is, on the Nativity of the Lord, Epiphany, Easter, or Pentecost—because he applies himself to secular gains rather than obeying the service of God, it is fitting that he be suspended from communion for three years. § 1. Likewise, if a deacon or priest has been absent from his church for three weeks, let them be subject to this condemnation.

C. XXX. A bishop is to be removed from the church into which he has crept and compelled to return to his own.

Likewise Pope Hilary, [to the Bishops of Tarragona, c. 3]. Once Bishop Irenaeus has been removed from the church of Barcelona and sent back to his own, and the inclinations which through ignorance of ecclesiastical laws desire to obtain what is not permitted have been calmed by priestly moderation, let a bishop of such a kind be ordained immediately for the people of Barcelona from their own clergy as it especially befits you, brother Ascanio, to elect and becomes you to consecrate; lest, if perhaps it is done otherwise, our command, especially with the rebuke of your name, strike down what we shall have learned was committed to the injury of God, from whom in particular comes the grace of priestly dignities.

C. XXXI. One who seeks another's chair, once expelled from it, shall also lack his own.

Likewise Leo, Bishop of the city of Rome, to Anastasius, Bishop of Thessalonica, [letter LXXXII, otherwise LXXXIV, c. 8]. If any bishop, having despised the modest size of his own city, has aspired to the administration of a more celebrated place and by any reasoning has transferred himself to a greater people, let him indeed be driven from the chair of another, and he shall also lack his own, so

that he preside neither over those whom he coveted through avarice nor over those whom he despised through pride. Therefore let each be content with his own boundaries and not desire to be enlarged beyond the measures of his right.

C. XXXII. One who aspires from a lesser church to a greater out of contempt shall lack both churches.

Likewise from the Council of Meaux, [c. 30]. If anyone of the priestly order, out of contempt for a lesser church, has ambitiously and wickedly aspired to a more powerful one, let the canonical determination be observed toward him, namely, that he lack both. GRATIAN. But one who has entered a vacant church for a price is to be deposed from his office, as is read in the Council of Rouen:

C. XXXIII. Let one who attempts to acquire a church by gifts be cast down from the clergy.

It has been decreed and prohibited by every means that, if any priest is found to give or to have given gifts to any cleric or layman, or to bestow other money so that, through cupidity, rapine, or presumption, he might buy at a price the vacant church of another priest for the sake of shameful gain, he is to be cast down from the clergy and shall be foreign to the rule. PART V. GRATIAN. But Pope Anterus demonstrates that transfers of bishops can be made by common counsel and for the benefit of others, and that, while they are living, others can be substituted in the churches from which they have withdrawn, writing [letter VII] to all the Bishops:

C. XXXIV. Transfers of bishops can be made for the sake of necessity or utility.

Know that transfers of bishops are permitted to be made for common utility and necessity, but not by anyone's own will or domination. Saint Peter, our teacher and prince of the apostles, was transferred from the city of Antioch to Rome for the sake of utility, so that he might be able to profit more there. Eusebius also was transferred by apostolic authority from a certain small city to Alexandria. Likewise Felix, from the city in which he had been ordained, through the election of the citizens because of the teaching and good life which he possessed, was transferred to Ephesus by authority of this holy see and the common counsel of the bishops, the remaining priests, and the peoples. For one does not pass from city to city, nor is one transferred from a lesser to a greater, who does this neither from a desire for advancement nor by his own will, but who, either driven by force from his own see, or compelled by necessity, or for the utility of the place or people, has been transferred by others not proudly but humbly. § 1. For just as bishops have the power regularly to ordain bishops and the remaining priests, so, whenever utility or necessity requires it, they have power both to transfer in the aforesaid manner and to enthrone, yet not without the authority and permission of the sacrosanct Roman see. § 2. For the cause of utility is one thing; that of avarice, presumption, and one's own will is another.

C. XXXV. Transfers of bishops can be made for the sake of necessity.

Likewise Pope Pelagius [II] to Archbishop Benignus, [letter II]. Know, most beloved brother, that the cause of necessity and utility is one thing, and that of presumption and one's own will is another. Therefore one who does not change his mind does not change his see—that is, one who migrates

from city to city not for the sake of avarice, domination, his own will, or his own preference, but is transferred for the sake of necessity and utility. For the utility of many is also to be preferred to the utility or will of one. For it is one thing to transfer, and another to be transferred. § 1. For it is one thing to pass voluntarily, and another to come by compulsion or necessity. Hence these do not change a city, but are changed, because they do this not voluntarily but by compulsion. § 2. Therefore those who deny that this can be done for the sake of utility or necessity, whenever common necessity or utility has persuaded it, do not understand the ecclesiastical rules well.

C. XXXVI. One who does not extend mercy to those suffering necessity is proved to deny Christ.

The same to the same. Everyone who groaned and who was troubled by Saul fled and came to David. If the most pious and just king David had known that it was a sin to receive those fleeing persecution and passing from place to place and from city to city, he would by no means have received such persons, nor kept them with himself, nor placed them in other cities. For those who persecute the Lord's bishops and compel them to pass from cities to cities persecute not so much them as our Lord Jesus Christ, whose embassy they discharge. Nor do the bishops themselves sin in this, since they do it not voluntarily but by compulsion; rather, those who persecute them sin, nor can this be imputed to the bishops themselves, but to those who compel them to do it. § 1. But those who deny that mercy is to be shown to fugitives and to those suffering necessity deny Christ Himself, who is mercy and truth. § 2. Those who refuse, for the sake of utility and necessity, to transfer from another city—even if it is lesser—to a city that does not have a bishop a more learned or more useful bishop, not passing voluntarily but through the exhortation of superiors, by better counsel, for peoples who need divine ministries and do not have their own bishop to instruct them, or refuse to enthrone a bishop who has been expelled and is suffering persecution for the sake of utility or necessity, deny mercy to those suffering necessity.

C. XXXVII. Let a bishop pass from church to church not through ambition but by synodal authority.

Likewise from the Fourth Council of Carthage, [c. 27]. Let a bishop not pass through ambition from an obscure place to a renowned one, nor any cleric of a lower order. Certainly, if the utility of the church demands it, with a decree on his behalf by clergy and laity presented to the bishops, let him be transferred in the presence of the synod, with another bishop nevertheless substituted in his place. Priests of lower rank or other clerics can migrate to other churches with the permission of their own bishops.

C. XXXVIII.

Likewise from the same, [Fourth Council of Carthage, c. 33]. If bishops or priests have come for the sake of visiting to the church of another bishop, let them be received in their own rank and be invited both to give the word and to consecrate the offering.

C. XXXIX. The church of one bishop ought not to be administered by another.

Likewise Pope Callistus to all the Bishops, [letter II, c. 3]. Just as the wife of another is not permitted to be violated by anyone, or judged or administered except by her own husband while he is living, so

neither is the wife of a bishop—which is understood without doubt to be his church or parish—while he is living, permitted to another to judge or administer without his counsel and will, or to enjoy intercourse with her, that is, ordination. Hence the Apostle says: "A wife is bound to the law of her husband for as long as her husband lives, but when he is dead she is released from the law of her husband." Likewise the bride of a bishop—because the church is called his bride and wife—is bound to him while he is living and released when he is dead. "And let her marry whom she wishes, only in the Lord," that is, regularly. For if, while he is living, she has married another, she will be judged an adulteress. Likewise he also, if he has voluntarily taken another bride, will be regarded as an adulterer and will be deprived of communion. But if he has been persecuted in his own church, he must flee to another and be joined to it, the Lord saying: "If they persecute you in one city, flee into another." But if he is to be transferred for the sake of utility, let him not do this by himself, but let him do it when invited by his brothers, with the authority of this holy see; not, however, for the sake of a desire for advancement, but for utility or necessity, as has been said. PART VI. GRATIAN. This is to be understood not only concerning bishops but also concerning any ministers of the church, namely, lest another creep into the place of one living. Hence blessed Gregory writes to the Bishop of Salona concerning one who had consented to be promoted to another's archdiaconate, [book II, indiction 10, letters XIV and XVI]:

C. XL. Let one who does not fear to invade the place of another be deposed.

We depose from the honor of that archdiaconate the one who, contrary to the rule of justice, consented to be advanced into another's archdiaconate. If he presumes afterward to minister in the same place, let him know that he is deprived of participation in holy communion.

C. XLI. There ought not to be two prelates in one church.

The same to the Monk Rusticus, [letter IV]. Among bees there is one prince; cranes follow one in lettered order; there is one emperor, one judge of a province. Rome, when founded, could not have two brothers as kings at the same time and is dedicated by parricide. In Rebecca's womb Esau and Jacob waged wars; individual bishops of churches, individual archbishops, individual archdeacons, and every ecclesiastical order rests upon its own rulers. PART VII. GRATIAN. Behold the cases in which another can be substituted for a bishop while he is living, although according to the truth of the matter such a person is proved to succeed a bishop who is not living. For one transferred from one city to another ceases to be bishop of that city from which he is transferred, and therefore one who succeeds him is proved to be substituted not for a living bishop but for one who, in a certain manner, is dead. But between one who is transferred by the necessity of enemy attack and one who is transferred for the sake of utility there is this difference: one who passes to another place through fear of enemy attack ought to return to his former place if it happens at some time to be freed from the enemy. Hence Pope Gregory writes to James, Bishop of Squillace, chapter 25:

C. XLII. One who has passed to another place through fear of enemy attack ought afterward to return to his own church.

The care of the pastoral office admonishes us to establish proper priests for destitute churches who ought to govern the Lord's flock with pastoral solicitude. For this reason we have thought it necessary to establish you, John, bishop of the city of Lesina, captured by enemies, as cardinal priest

in the church of Squillace, so that with regard for future recompense you may fulfill the care of souls once undertaken. And although you have been driven from your own place by the imminence of the enemy, you ought to govern another church which lacks a shepherd, yet in such a way that, if it happens that that city is made free from enemies and, with the Lord protecting it, restored to its former state, you return to the church in which you were first ordained; but if the aforesaid city is oppressed by the calamity of continuing captivity, you ought to remain in this church in which you have been incardinated by us. GRATIAN. But one who is transferred for the sake of utility is by no means compelled to return to the former church. There is also another case in which a bishop is substituted while a bishop is living. For when anyone, after leaving his former chair, has passed to another by his own authority, if another has been substituted for him, although the former does not cease to be bishop of his former church, nevertheless the substituted one will possess the episcopate. Hence Damasus, Bishop of the city of Rome, writes to all the bishops:

C. XLIII. Concerning priests who have migrated from their own churches to others.

We have held those priests who have migrated from churches to churches foreign to communion until they return to those cities in which they were established. But if, when one has migrated elsewhere, another has been ordained in the place of the living man, let the one who deserted his own city lack priestly dignity for as long as his successor rests in the Lord. GRATIAN. Transfers of episcopal sees are also sometimes accustomed to be made when fear of enemy attack intervenes.

Hence Gregory writes to John, Bishop of Velletri, [book II, letter 11]:

C. XLIV. Transfers of episcopal sees can be made because of the necessity of the time.

The character of the time admonishes us to transfer the sees of bishops, established in antiquity in certain cities, to other places in the same diocese which we consider safer, so that the inhabitants may both be able to live securely and more easily avoid barbarian danger. For this reason we instruct you, John, our brother and fellow bishop of the city of Velletri, to transfer your see to the place once called Arenata, at Saint Andrew the Apostle, so that you may be able to exist more freely from the incursion of enemy attack and there arrange the custom of solemnities festively. PART VIII. GRATIAN. Likewise, when anyone for the sake of humility, by apostolic concession, has descended from an episcopal see to monastic subjection, another can be substituted in his place; but he will by no means be able to rise again to the pontificate. Hence in the fifth action of the Synod of Constantinople of 383 Fathers, under Pope John VIII, over which Peter, cardinal priest, Paul, Bishop of Ancona, and Eugenius, Bishop of Ostia, legates of the Pope, presided, they said:

C. XLV. A bishop who becomes a monk for the sake of humility cannot return to the pontificate.

It is by no means held among us that anyone who has descended from the pontifical order to the life of monks can afterward return to the pontificate. Likewise: § 1. The holy synod commanded that whoever has descended from pontifical dignity to the life of monks and a place of penance shall by no means rise again to the pontificate. For the life of monks possesses the character of subjection and discipleship, not of teaching, presiding, or feeding others. GRATIAN. This is granted to certain

persons for doing penance, not for preserving repose. Hence Pope Liberius writes to all the Bishops, [letter II]:

C. XLVI. A bishop is not permitted to leave the flock undertaken because of the harassments of evil persons.

It has been suggested to us that, because of past labors and harassments, some of you leave the congregations assigned to themselves and committed to them by God, and that in the future more wish to leave the churches which they ought to protect, neglect to labor for the sheep committed to them, hasten to consign themselves to the repose of monasteries, choose release from the labors of the episcopate, and desire rather to lead a life in silence and leisure than to persevere in those things committed to them, although the Lord says: "Blessed is he who has persevered to the end." For whence is blessed perseverance except from the virtue of patience? Since, according to the apostolic preaching, "all who wish to live piously in Christ suffer persecution." Therefore, dearest brothers, let not the bitterness of afflictions compel you to withdraw from the pious purpose of your mind. Consider how much our creator, lord, and redeemer endured for our absolution and liberation, and to what insults He handed Himself over to be subjected, so that He might free us from the bonds of diabolical power. Attend, therefore, to yourselves and to the whole flock, in which the Holy Spirit established you as bishops to govern the church of God, which He acquired with His own blood, so that there may be no one to deceive or seduce you by subtlety of speech, causing you to leave the congregations committed to you and to surrender yourselves to some repose because of the reproach of evil men, so that you save only yourselves and leave your children orphans.

C. XLVII. In persecutions a bishop shall not desert his church.

Likewise Nicholas to Unifred, Bishop of the church of Moriana. You ask, therefore, through the priest Galdagar, whether, when you are driven from your bishopric by the Normans, you ought henceforth to live in a monastery. In this matter know, dearest brother, that, if it is dangerous for a helmsman to desert a ship in calm weather, how much more in the waves? Here we do not say that we should not flee the plots of persecutors—and especially of pagans—when they rage for a time and, because of the multitude of our transgressions, are divinely permitted the power to do harm, particularly since we ought not to advance against them voluntarily, and it is clearer than light that many prophets and apostles, and the Lord Himself, fled persecutors of this kind; rather, we say that it certainly befits especially us, who like rams provide leadership to the flocks—indeed, who are also their shepherds—with God as author to persevere with them in dangers according to our strength, and when tranquility has been restored by divine mercy and the harassment of those raging has been quieted, immediately to seek the flock, gather it into one, and raise up its spirits by preaching the peace and especially the security of the heavenly homeland. And it is fitting for us to be solicitous for their protection so long that, if perhaps by God's judgment they lose the advantages of the present times, they may hope without doubt to receive the eternal joys of the future life.

C. XLVIII. The adversity of the good is not a reprobation but a trial of virtue.

Likewise Gregory, [book VII, letter 126, to King Reccared]. Adversity which is placed in the way of good desires is a trial of virtue, not a judgment of reprobation. For who does not know how prosperous it was that the blessed apostle Paul was coming to Italy to preach, and yet in coming he

suffered shipwreck? But nevertheless the ship of his heart stood intact amid the waves of the sea. PART IX. GRATIAN. This is understood to be observed when among the subjects there are found some whom the life of the prelates benefits, when the prelate is not sought personally and the safety of the church cannot be secure through others, lest, if he begins to desert those whom he can benefit, it be said of him: "But the hireling, and he who is not the shepherd, whose own the sheep are not, sees the wolf coming and leaves the sheep and flees." But when he is sought personally, let him flee after the example of Christ, who fled from the face of Herod into Egypt; let him flee after the example of Paul, who was lowered by the brothers through the wall in a basket. Hence Augustine says: "Let the minister of Christ flee, as Christ fled into Egypt; let one who is sought personally flee, provided that the safety of the church is secured through others." Hence He also says to the disciples: "If they persecute you in one city, flee into another." Hence He also hid Himself and went out from the temple when the Jews took up stones to cast at Him. Hence Augustine also says concerning the same in Psalm 54: "Behold, I have gone far off in flight; this touches upon the fact that He avoided His persecutors, so that He might remove the occasion of anger, and remained in deserted places praying, in which He taught us to rest in the secrecy of conscience when we are oppressed by evil persons." But when not only the safety of the prelates but that of the whole church is sought, and the faith is attacked, it is necessary that they ascend against the adversary and in the day of battle set themselves as a wall for the house of the Lord, laying down their souls for their sheep, so that by the example of their own suffering they may kindle those whom they cannot confirm any longer by the word of teaching. And this concerning manifest persecutions. § 1. There is also another kind of persecution under which the Apostle labored, saying: "Who is weak, and I am not weak? Who is scandalized, and I do not burn? etc." Hence Augustine also says in Psalm 101: "The bones, that is, the strong, whose frying pan is those who are scandalized; the good person is fried to the extent that he loves." Hence the same in Psalm 30: "The just man is angry at the sins of the chaff, yet he does not hate, in which the eye would be extinguished; and the belly stands for the inner things, which are disturbed when the impious cannot even be corrected. He does not cry out to them, because his life has failed in sorrow, when he sees that what he preaches does not profit." § 2. Hence the same in Psalm 69, distinguishing both kinds of persecution: "The voice of those suffering tribulation with Christ, that is, of the martyrs, endangered amid sufferings but presuming upon the head. With them is the voice of every just person for whom, out of abounding charity, the iniquity of Christians is a suffering, just as Lot endured bodily persecution from no one in Sodom, but suffered from the evils of those with whom he dwelt. There is therefore persecution of the just either from a lion in assault or from a dragon in plots, whence let all cry out: O God, attend unto my help." § 3. But when a prelate is afflicted by the vices of his subjects, sometimes there is one incurable obstinacy of all, and sometimes the evil are found mingled with the good. When the good dwell together with the evil, the good are not to be deserted because of the evil, lest, by perversely avoiding the evil, we surpass those whom we flee in going to hell; rather, let the evil be tolerated because of the good. Hence Gregory: "One refuses to be Abel whom the malice of Cain does not exercise"; for the iron of our mind cannot come to the sharpness of truth unless the file of another's depravity has scraped it. Hence also Augustine: "You who are good, tolerate the evil, etc.," below, concerning the toleration of the evil, in the first cause of heretics. Hence the same says: "We commit a greater evil in the separation of the good than we flee in the association of the evil. § 4. God does not impute to such a person his own sins, because he did not commit them; those of others, because he did not approve them; negligence, because he

was not silent; pride, because he remained in unity." Hence the same in Psalm 54: "Who will give me wings like a dove? Not like a raven. The dove seeks to fly away from troubles, but does not lose love and always groans. Thus a good person wishes to separate himself in body, not in love, from those whom he cannot benefit. § 5. But sometimes he is bound not by the birdlime of cupidity but by care and office, so that he cannot desert them. Then let him say: 'I desire to be dissolved and to be with Christ; but to remain is necessary on account of you'; and thus there is merit from desire. § 6. 'Behold, I have gone far off in flight,' not in place, lest the charity of the good be broken, lest he lose the exercise afforded by the evil, whom God mingles in, as He mingled Judas with the apostles," whom, although He knew him to be a thief, He nevertheless sent to preach and gave him the Eucharist, teaching that the evil are to be tolerated in the church and that association with the evil does not harm the good. But when there is an obstinate malice of all the subjects and the presence of the prelates does not benefit them, then it is permitted even bodily to withdraw from them, lest both their wickedness always advance for the worse and the prelates lose the fruit which they could find from the advancement of others. Thus the blessed Benedict is read to have deserted those whom he had seen conspire with one mind for his death. Hence also blessed Gregory, when Peter the Deacon asked whether it is permitted for a prelate to desert a flock once undertaken, responded in book II of the *Dialogues*, c. 3, saying:

C. XLIX. When it is permitted for prelates to desert their subjects, or not.

The evil are to be borne with equanimity together in a place where some good persons are found who may be helped. For where fruit from the good is entirely lacking, labor upon the evil sometimes becomes superfluous, especially if nearby causes are available which may be able to bear better fruit for God. § 1. Something often occurs in the mind of the perfect which ought not to be passed over in silence, because, when they consider their labor to be without fruit, they migrate to labor with fruit in another place. Hence that distinguished preacher also, who desires to be dissolved and to be with Christ, for whom to live is Christ and to die is gain, who not only himself sought the contests of sufferings but also kindled others to endure them—when he suffered persecution at Damascus, so that he might be able to escape, sought a wall, a rope, and a basket and wished himself to be lowered secretly. Surely we do not say that Paul feared death, which he himself testifies that he seeks for the love of Jesus? But when he perceived that less fruit was available to him in the same place, he preserved himself for grievous labor with fruit elsewhere; for the strong warrior of God refused to be held within enclosures and sought the field of contest. GRATIAN. From the authorities of many it appears when others can be substituted while bishops are living, and when they cannot.

Question II

GRATIAN. But that this man, once his health has been recovered, seeks his chair again is held valid by no authority. Yet if he left off the celebration of sacrifices because of infirmity, he is not prohibited from carrying it out once his health has been recovered. Hence Alexander II writes to Gebhard, Archbishop of Salzburg:

C. I. Concerning a certain priest who suffered from the falling sickness.

The following was contained in your letters: This cleric possesses the order of priest; but because he suffers from the falling sickness, and we ourselves have recognized this at the present time, we did

not dare to permit him to offer or celebrate Mass. But because illness is not a fault, we have resolved that counsel should be given on this matter by the decree of our authority. We therefore counsel that, if he is frequently touched by this illness, he be prohibited by every means from the offering and the celebration of Masses. For it is indecent and dangerous that, overcome by the epileptic illness, he should fall during the consecration of the Eucharist. But if by the mercy of God he recovers, since not fault but infirmity is the cause, we no longer forbid him to offer sacrifice.

C. II. Let one who is frequently dashed to the ground be suspended from the governance of a church.

Likewise Pope Gelasius to Bishops Rusticus and Fortunatus. Recently the clerics of the church of Foropopoli, together with the laymen Sabinus and Pelagius, disclosed by their own report that their prelate was troubled by a certain grave necessity, by the onset of which they said that he was frequently dashed down. Lest this appear to introduce scandal among the faithful and disturb the church of God established everywhere by this offense, especially since they affirmed that with the same man willing they had proceeded here, we directed writings to your affection so that you might render an appropriate visitation to the church whose ruler is held bound by such a misfortune. But because the same pontiff has now come here and proclaims that all the things spread abroad concerning him are false, with regard for the contemplation of divine judgment and for your conscience and estimation, let the truth of the matters be most carefully investigated—namely, whether he is proved at any time, either in a house, in a procession, or in any other place whatsoever, suddenly to have collapsed, uttered confused cries, and cast foam from his mouth; let it be inquired into with as great an examination as can be made. Yet whether this cannot be confirmed by the testimony of any persons or is said never to have happened, it must not be thought that this can suffice; rather, let there be certain and manifest proof, because a matter so great is not to be handled too sluggishly. Let your affection, brother Rusticus, make the affair characteristic of itself and suitable for a great pontiff, so that you establish him with you for at least thirty days and compel him, as a necessary test, to eat meats without distinction.

Causa VIII

GRATIAN. A certain bishop, acting at the point of death, appointed a successor for himself by testament; afterward, through the patronage of his friends, he is elected to that episcopate; after the election he furnished an oath to the canons for the indemnity of the church; he is accused of simony, as though he had furnished a gift from service; before the time of sentence he is deserted by his clerics; without letters from the apostolic pontiff the bishop returns to his own church. (Qu. I.) Here it is asked first whether a bishop is permitted to appoint a successor for himself. (Qu. II.) Second, whether the patronage of friends ought to prevail in an election. (Qu. III.) Third, whether one who furnishes an oath of this kind to the canons after election is to be held a simoniac. (Qu. IV.) Fourth, whether clerics are permitted to withdraw from their bishop before the time of sentence. (Qu. V.) Fifth, whether without letters from the apostolic pontiff he ought to return to his own church.

Question I

GRATIAN. PART I. That a bishop is permitted to appoint a successor for himself is inferred from the words of Pope Zacharias, by which he permitted the Archbishop of Mainz to establish a helper for himself who, after he had died, would succeed to the fullness of power. § 1. Likewise from the words of Pope Symmachus, who says, "If the Pope's passing occurs unexpectedly, so that he cannot determine beforehand concerning the election of his successor," it appears that bishops can appoint successors for themselves. § 2. Likewise the same is proved by the example of blessed Peter, who appointed blessed Clement as his successor. Hence John III writes to the Bishops of Germany and Gaul, [sole letter, c. 2]:

C. I. That Peter took Linus and Cletus to himself as helpers.

If Peter, the prince of the apostles, took Linus and Cletus to himself as helpers, he nevertheless delivered to them neither the power of the pontificate nor the rule of binding and loosing, but delivered it to his successor Clement, who merited to hold after him the apostolic see and the pontifical power handed over to him by blessed Peter. But Linus and Cletus ministered in external matters; Peter, the prince of the apostles, devoted himself to the word and prayer.

[PALEA C. II.

Hence Clement himself, in the letter sent to James of Jerusalem, writes among other things that Peter, while still living, elected Clement as bishop: "In those very days in which Simon Peter foresaw the end of his life, suddenly rising after taking my hand, in the ears of the whole church he brought forth these words: I ordain this Clement as bishop for you, to whom alone I hand over the chair of my preaching and teaching, whom beyond the others I have found to worship God, love men, be chaste, devoted to the pursuits of learning, sober, kind, just, patient, and one who knows how to bear the injuries even of some of those who are instructed in the word of God."] GRATIAN. But in the Council of Antioch this is altogether prohibited from being done, in which [c. 23] the following statute is read:

C. III. A bishop ought not to establish a successor for himself.

We decree that a bishop is not permitted to establish another as successor for himself, even if he reaches the end of life. But if anything of this kind has been done, let an appointment of this kind be void. Let ecclesiastical law be preserved, which contains that it ought to be done in no other way except with a synod and the judgment of the bishops and the election of the clergy, who after the death of the one resting have the power to elect and promote him who shall have been found worthy.

C. IV. Concerning the same.

Likewise from the Council of Pope Martin, [c. 8]. Let a bishop not be permitted before the end of his life to establish another as successor in his place. But if anyone has attempted to usurp this power, such an appointment will be void. Therefore, it ought not to be done otherwise than with the counsel and judgment of the bishops, who after the departure of the predecessor have the power to elect one worthy.

C. V. Concerning the same.

Likewise Pope Hilary, [in the Roman Synod, c. 5]. Many priests established at the boundary of death are said to substitute others in their own place by designating their names, evidently so that a lawful election is not awaited but the favor of the deceased is held as the consent of the people. Judge how grave this is. It was acclaimed by all: Let this presumption never occur. The things which are God's cannot be given by man.

C. VI. Concerning the same.

Likewise Jerome, [on Titus, c. 1]. Moses, the friend of God, to whom God spoke face to face, could certainly have made his own sons successors to his principate and left his own dignity to his posterity; but Joshua, a stranger from another tribe, is chosen, so that we might know that principate over peoples is to be granted not to blood but to life. And now we see that very many make this thing a benefice, so that they seek to erect as pillars in the church not those whom they know can profit the church more, but those whom they themselves love, or by whose services they have been won over, or for whom one of their superiors has asked, and—to keep silent about worse things—those who obtained by gifts that they be made clerics.

C. VII. Concerning the same.

Likewise Pope Innocent II, [in the Roman Council, c. 16]. By apostolic authority we prohibit anyone from having power to claim or presume to demand churches and prebends, provostships, chaplaincies, or any ecclesiastical offices by hereditary right. But if any wicked person or one guilty of ambition presumes to attempt this, he will be punished with the due penalty and will lack the things sought. GRATIAN. By all these authorities bishops are prohibited from appointing successors for themselves. But it is one thing to deliberate with the brothers concerning the election of one's successor, and another to seek for oneself by testament, as though an heir to one's own dignity. The former is permitted to be done, but the latter is utterly prohibited. But that deed of blessed Peter can validly be taken as an argument by those who substitute for themselves such persons as the successor blessed Peter sought for himself. But because office began to be granted not to life but to blood, and each began to seek for himself as successors to the episcopate persons who would be found either hateful to the peoples or needing to be taught by the congregation, it was established by the sacred canons that no one seek a successor for himself in his office, but that by the election of the people one be sought who worthily serves their utility, who seeks their utility and not his own gains, who wishes to raise up seed for Christ and not to gather riches for himself. One who has despised doing this is rightly rejected by the church. Hence Augustine in the book against the Manichaeans, [book XXXII, c. 10]:

C. VIII. One who benefits both himself and the church is understood to be shod on both feet.

PART II. Of old a brother was commanded to take the wife of his brother who had died before him, so that he might raise up offspring not for himself but for him, and what was born from her might be called by his name. But if he refused, he was accustomed to be unshod on one foot and spat upon in the face. Now every preacher of the Gospel ought so to labor in the church that he raises up seed for his dead brother, that is, for Christ, who died for us, and what has been raised up receives His name.

But one who, having been elected by the church, has refused the ministry of evangelizing is worthily and deservedly despised by the church itself. For one who benefits both himself and the church is well understood to be shod on both feet. Hence this: "How beautiful are the feet of those who announce good things." But one who flees the care of gaining others has borne in himself, fulfilled and not merely figured, the reproach of that unshod man.

C. IX. Just as a position of governance is to be denied to those desiring it, so it is to be offered to those fleeing it.

Likewise Gregory in the *Register*, [book VI, letter 5, to Bishop Cyriacus]. In your writings you relate that you greatly sought repose, but through this you show that you have fittingly come to pastoral solicitude, because, just as a position of governance is to be denied to those desiring it, so it is to be offered to those fleeing it. And as it is written: "Nor does anyone take honor to himself, but he who is called by the Lord, as Aaron was," and again the same distinguished preacher says: "If one died for all, therefore all died; and Christ died for all, so that those who live may now live not for themselves but for Him who died for them and rose again," and it is said to the shepherd of holy Church: "Simon, son of John, do you love me? Feed my sheep." From these words it is gathered that if one who is capable refuses to feed the sheep of almighty God, he shows that he loves the supreme shepherd not at all. For if the only-begotten Son of the Father went forth from the Father's secret place into our public realm to fulfill the utility of all, what are we going to say if we prefer our secret place to the utility of our neighbors? § 1. Repose, therefore, is both to be sought by us from the heart and yet sometimes to be postponed for the gain of many. For just as we ought to flee occupation with our whole desire, so, if there is no one to preach, it is necessary to undertake the burden of occupation with a willing shoulder. We are taught this from the action of two prophets, one of whom attempted to avoid the office of preaching and the other sought it. For Jeremiah answered the Lord who was sending him, saying: "Ah, ah, ah, Lord God, I do not know how to speak, because I am a boy." And when almighty God sought a person to preach, saying, "Whom shall I send, and who will go for us?" Isaiah voluntarily offered himself, saying: "Behold, I; send me." Behold, an outwardly different voice proceeded from each, but it did not emanate from a different source of love. For there are two precepts of charity, love of God and love of neighbor. Therefore Isaiah, desiring through the active life to benefit his neighbors, seeks the office of preaching. But Jeremiah, through the contemplative life desiring to adhere continually to the love of the Creator, objects that he ought not to be sent to preach. What one laudably sought, therefore, the other laudably feared; the latter, lest by speaking he lose the gains of silent contemplation, the former, lest by keeping silent he suffer the losses of zealous work. But in both this must be subtly observed: that the one who refused did not fully resist, and the one who wished to be sent saw himself first purified by the coal of the altar, lest either anyone not purified dare to approach the sacred mysteries or one whom heavenly grace chooses proudly object under the appearance of humility.

C. X. A position of abasement belongs in one's desire; one of dignity is always undertaken from necessity.

The same in the *Moralia*, [book XXXV, c. 13, on Job 42]. It must above all be known that sometimes obedience, if it possesses something from its own inclination, is nothing; sometimes, if it possesses nothing from its own inclination, it is minimal. For when success in this world is commanded, when a higher position is ordered, one who obeys in order to receive these things empties for himself the

virtue of obedience if he pants for these things from his own inclination. For one who serves the desire of his own ambition in order to receive the prosperous things of this life does not direct himself under obedience. Again, when contempt of the world is commanded, when reproaches and insults are ordered to be acquired, unless the mind seeks them from itself, it diminishes for itself the merit of obedience, since it descends unwillingly and reluctantly to those things which are despised in this life. And a little above: § 1. Obedience is rightly preferred to sacrifices, because through sacrifices the flesh of another is slain, but through obedience one's own will. Contrary to this, disobedience is shown to be the sin of divination. From its opposite, therefore, it is better shown what should be thought of its praise. For if "to resist is as the sin of divination, and to refuse to acquiesce is as the crime of idolatry," obedience alone possesses the merit of faith, without which everyone is proved to be unfaithful even if he appears to be faithful.

C. XI. One who desires to preside, not to benefit, ought not to be a bishop.

Likewise Augustine, [book XIX of *The City of God*, c. 19]. "One who desires the episcopate desires a good work." He wished to explain what the episcopate is, because it is the name of a work, not of an honor. For the word is Greek and is derived from the fact that one who is placed over others superintends those over whom he is placed, namely by exercising care for them; for *skopos* is attention. Therefore, if we wished, we could say in Latin that bishops are "superintendents," so that he may understand that one who loves to preside, not to benefit, is not a bishop. Accordingly, no one is prohibited from the pursuit of knowing the truth, which pertains to praiseworthy leisure. But a higher position, without which a people cannot be governed, although it is held and administered as is fitting, is nevertheless sought indecently. Therefore the charity of truth seeks holy leisure; the necessity of charity undertakes just business. If no one imposes this burden, one must be free for perceiving and contemplating the truth; but if it is imposed, it must be undertaken because of the necessity of charity. Yet not even then is the delight of truth to be abandoned altogether, lest that sweetness be withdrawn and just necessity become oppressive.

C. XII. Let a teacher moderate the words of teaching according to the capacity of those learning.

Likewise Peter. PART III. It is fitting that one who teaches and instructs untrained souls be such that he can adapt himself according to the capacity of those learning and direct the order of his words according to the capacity of the hearer. Therefore he ought above all to be learned and taught, irreproachable, mature, fearful, just as you yourselves have proved this Clement will be after me.

C. XIII. Let one who presides over all strive to relieve individuals.

Likewise from the same. Clement, since you have wished to preside over all, help individuals as you are able and relieve individuals, for you bear the burden and solicitude of individuals.

C. XIV. Those who grant an ecclesiastical rank from favor, not merits, act against Christ.

Likewise Jerome, [on Titus, c. 1]. "One who despises you despises me." From this it is manifest that those who, after despising the law of the Apostle, have wished to confer an ecclesiastical rank on someone not for merits but from favor act against Christ, who through His Apostle subsequently explained what kind of person is to be established as priest in the church.

C. XV. Let no one be elected to the priesthood unless he is held both holier and more learned than the rest.

Likewise Jerome in the book of Leviticus. Therefore, although the Lord had commanded concerning the appointment of a prince, and the Lord had chosen him, nevertheless the synagogue too is summoned. For the presence of the people is also required in ordaining a priest, so that all may know and be certain that he who is more excellent than all the people, who is more learned, who is holier, who is more eminent in every virtue, is elected to the priesthood, and this with the people standing by, lest afterward any reconsideration remain for anyone, or any scruple. This, moreover, is what the Apostle too commands in the ordination of a priest, saying: "But he must also have good testimony from those who are outside." Yet I see something more in what it says: "because Moses summoned the whole synagogue," that is, to gather all the powers of the mind and assemble the virtues into one, so that, when there is discourse concerning the priestly sacraments, all the powers of the mind may be vigilant and intent, nothing of wisdom, nothing of knowledge, nothing of diligence may be lacking in them, but the whole multitude of the senses may be present, the whole assembly of holy thoughts may be present, so that, examining within the sanctuary of his heart what the pontiff is, what the anointing is, and what his vestments are, he may be able to perceive it.

C. XVI. Let the governance of a people be furnished by divine election.

Likewise from the book of Numbers. If therefore so great and such a man as Moses does not permit his own judgment concerning the election of a prince of the people and the appointment of a successor, who will there be who dares—either from the congregation, which is often accustomed to be moved by acclamations, perhaps roused toward favor or for a price, or even from among the priests themselves—who will there be who judges himself suitable for this, unless it be one to whom it is revealed by the Lord as he prays and asks? As God also says to Moses: "Take to yourself Joshua the son of Nun, a man who has the Spirit of God in himself, and you shall lay your hands upon him, and you shall set him before Eleazar the priest; and give commands to him in the sight of the whole synagogue, and command concerning him before them, and you shall give your glory upon him, so that the sons of Israel may hear him." You hear the ordination of the prince of the people described so manifestly that it scarcely needs exposition. Here there is no acclamation of the people, no account of blood relationship, no regard had for kinship. Let an inheritance of fields and estates be left to relatives. Let the governance of the people be handed over to him whom God has chosen, namely, such a man who has—as you have heard written—the Spirit of God in himself, and before whose sight the precepts of God are, and who is very well known and familiar to Moses, that is, in whom there is clarity of the law and knowledge, so that the sons of Israel may be able to hear him.

C. XVII. An election ought to come not from favor but from judgment.

Likewise Gregory to the citizens of Naples, [book VIII, letter 40]. It is neither new nor blameworthy for the votes of the people to be divided into two parties in electing a bishop; but it is grave when, in cases of this kind, the election comes not from judgment but from favor alone. GRATIAN. But when the governance of the people is ordered to be handed over to one whom God chooses, it is given to be understood that it is sometimes handed over to some whom God has not chosen.

Hence Jerome:

C. XVIII. Sometimes a prince of the church is given not by the judgment of God.

PART IV. Perhaps we say something boldly, but we say what is written. A prince of the people and judge of the church is not always given by the judgment of God, but as our merits demand. If our deeds are evil and we work malicious things in the sight of God, princes are given to us according to our heart. And I shall prove this to you from the Scriptures. For hear what the Lord says: "They made a king for themselves, and not through me; a prince, and not through my counsel." And this appears to have been said concerning that Saul whom the Lord Himself had indeed chosen and commanded to be made king. But because he had been chosen not according to the will of God but according to the merit of a sinful people, He denies that he was appointed with His will or counsel. Therefore, let us understand that something of this kind is also done in the churches: that in accordance with merits, either a ruler of the church powerful in word and deed is bestowed by God, or, if the people does what is malignant in the sight of the Lord, such a judge of the church is given under whom the people suffers hunger and thirst—not hunger for bread nor thirst for water, but hunger for hearing the word of God.

C. XIX. Those who seek honors from men are not sons but hirelings.

Likewise Augustine, [tractate XLVI on John 10]. There are certain rulers in the church of whom the apostle Paul says: "Seeking their own things, not the things of Jesus Christ." What is "seeking their own things"? Not loving Christ freely, not seeking God for God's sake, pursuing temporal advantages, panting after gains, seeking honors from men. When these things are loved by a ruler and God is served for this reason, whoever is such is a hireling; let him not count himself among the sons. GRATIAN. Therefore those who are set over others are not always understood to be better than the rest. Hence Jerome, [on Titus, c. 1]:

C. XX. Bishops are not made superior by election but are approved.

This must be inferred against those who are puffed up concerning the episcopate and think that they have obtained not a stewardship of Christ but an empire: that whoever have been ordained bishops are not immediately better than all those who have not been, and they should not regard themselves as the more approved because they themselves have been elected. But if the sins of sons prevent a just man from the episcopate, how much more will each man, considering himself and knowing that the powerful will powerfully suffer torments, withdraw himself from this, not so much an honor as a burden, and not hesitate to occupy the place of others who are more worthy?

C. XXI. According to the rank of his office, each person ought to be better.

Likewise from the same, [on Titus, c. 2]. For what kind of edification will there be for a disciple if he understands himself to be greater than his teacher? Hence not only bishops, priests, and deacons ought greatly to take care that they surpass in conduct and speech the whole people over whom they preside, but also the lower rank—exorcists, readers, sacristans, acolytes, and absolutely all who serve the house of God—because it greatly destroys the church of Christ for laymen to be better than clerics.

C. XXII. The people will judge a bishop who does not perform his offices.

The same, [on Titus, c. 1]. I fear that, just as the queen of the south, coming from the ends of the earth to hear the wisdom of Solomon, will judge the men of her time, and the men of Nineveh, having done penance at the preaching of Jonah, will condemn those who despised a savior greater even than Jonah, so very many among the peoples may judge bishops who withdraw themselves from ecclesiastical rank and do not exercise the things which befit a bishop.

C. XXIII. One who does not correct his own clerics cannot correct the people.

Likewise Ambrose in his rebuke to the people, [sermon 83]. But why do I rebuke you, when you can convict me with one statement? For I am convicted when in this respect I see the clerics to be more negligent than you. For how can I correct sons when I cannot amend brothers? Or with what confidence shall I become angry with laymen when I am silenced before my associates by the shame of modesty? But I, brothers, do not speak concerning all; there are certainly some who are devoted, and there are also others who are negligent. But I name no one: let his own conscience address each.

C. XXIV. For salvation it does not suffice a bishop to be equal to the people in morals and life.

Likewise Bede on Matthew. Nor should we judge it sufficient for our salvation if we are equal in faith or deeds to crowds of the negligent or of any unlearned persons, since one rule of believing and living alike has been prescribed for them in the sacred writings. GRATIAN. Therefore, lest, as was said above, someone seek such successors for himself in his own office, bishops are prohibited from establishing another as successor for themselves and substituting another in their own place by designating names.

Question II

GRATIAN. That the patronage of friends ought not to prevail in the election of any persons is proved by the authority of blessed Pope Gregory, who in the third book of the *Register*, [indiction 11, letter 22], writes to the Subdeacon Antonius, saying:

C. I. In the election of a bishop let neither the giving of gifts nor the patronage of any persons prevail.

Before all else, let this be your care: that in this election neither the giving of rewards intervene by any means nor the patronage of any persons prevail. For if anyone has been elected through the patronage of certain persons, when he has been ordained he is compelled by the requirement of reverence to obey their wills, and thus it happens that the property of that church is diminished and the ecclesiastical order is not preserved. Therefore, at your admonition, they ought to elect such a person as serves no one's improper will but, adorned in life and morals, can be found worthy of so great an order.

C. II. In the election of a bishop let each look to the common utility, not to his own gain.

The same to the Clergy of Milan, [book II, indiction 11, letter 29]. Most beloved sons, admonished by the discipline of our office, we counsel that, in the matter of receiving a bishop, none of you, with the common utility neglected, look to his own gain, lest, if anyone seeks his own advantages, he be deceived by a frivolous estimation, because a mind which cupidity binds does not examine with free judgment the person to be preferred over it. Therefore, considering the things which are expedient for all, always furnish in all things the most complete obedience to him whom divine grace shall have preferred over you. For one once set over you ought no longer to be judged by you, but he is to be judged so subtly now to the extent that afterward he is not to be judged.

Question III

GRATIAN. But that one who, after election, has furnished an oath for the indemnity of the church is not to be held a simoniac is easily proved. For it is one thing to make an oath before election or to agree that one will make it for this purpose, so that one may be elected; it is another, with no preceding agreement, to offer an oath of this kind after election. The former casts him down from office as one who has bestowed a gift; but the latter generates no impediment for the one to be consecrated. Concerning the former case Pelagius writes to the Clergy of Catania:

C. I. One elected as bishop shall give no one any security concerning ecclesiastical property.

Some time ago we directed writings of this kind to our brother and fellow bishop Eucarpus concerning the visitation of the church of Catania, so that you could recognize our judgment in them. Nevertheless, because we have learned, also from your report, that certain persons there, with no sound intention but through depraved pursuits, stir up dissensions—persons who, knowing that they cannot be advanced to the episcopate by age, knowledge, or merits of life, wish to disturb the church only for this purpose: that the future bishop may promise them impunity concerning those things which were seized from it, and that ambition for the episcopate may become security for rapine—we have therefore judged that you too should be admonished to hasten, God favoring, to bring to us the decree made concerning the deacon Elpidius and subscribed by all those whom your report designated, together with the letter of the aforesaid visitor and with the same deacon. And a little later: When this son of ours, the magnificent man Leo the praetor, had come here, he reported to us concerning the individual things which were set in motion there, and how the wishes of nearly the whole city agreed upon the deacon Elpidius. Hence, because we can have no doubt at all concerning the testimony of the aforesaid man, therefore cause the deacon Elpidius, as was said, to hasten to us, and do not wait any longer for our admonition to have to be sent to him. Nevertheless, by the present command, through your affection, we specially admonish him not to promise anyone that he will give or is going to give anything, nor dare to give or promise anyone any security concerning past ecclesiastical matters, nor, as though already made bishop, freely permit those things which were plundered to remain so, knowing that, if he has done or does anything of this kind, not only is the promise itself not permitted by us to have force, but, with injury to our judgment which we held concerning him, he will not be able to merit the order of pastoral consecration. GRATIAN. But concerning the second case it is read in the acts of Urban II:

C. II. After election, one elected may furnish an oath for the indemnity of the church.

Artaldus, Bishop of Arles and suffragan of the church of Narbonne, came to Rome to be consecrated by the lord Pope Urban; for his archbishop refused to consecrate him because after his election he swore to the canons for preserving the goods of the church. He was therefore consecrated by the lord Pope Urban after first being cleared concerning an oath of this kind: "Before my election I made no agreement, so that I might be elected, concerning the oath which after election I made to the canons of our church. But the Archbishop of Narbonne omitted my consecration for no charge other than this, to my knowledge, nor am I conscious of any charge on account of which he might repel me from the priesthood."

Question IV

GRATIAN. That clerics are not permitted to withdraw from their own bishop before the time of sentence is proved by the authority of Pope Symmachus, who says:

C. I. Before the time of sentence clerics are not permitted to withdraw from their own bishop.

Are not the words of the canons direct: "If any of the clerics has withdrawn from his own bishop before the time of sentence because of a doubtful suspicion, does not a manifest censure remain upon him?"

§ 1. For ecclesiastical law requires that a pontiff accused by others not be abandoned before the charges have been established in the light.

Question V

GRATIAN. Without letters from the apostolic pontiff, a bishop who has been accused and summoned by the holy see shall not return to his own church. Hence Pope Sixtus [I] says, [letter II, c. 2]:

C. I. A bishop summoned by the holy apostolic see shall not return home unless cleared and furnished with apostolic letters.

Any one of the brothers who has been assailed and summoned by this holy see, when he has presented himself to us, shall not return before he has been fully furnished from here with apostolic or formal letters and has been cleared, if there was anything from which to clear him; and after he has returned home, let his neighbors learn how he concluded his own case and that of others here, so that he may be able to announce and proclaim it to all without any uncertainty. For the bishops were commanded by the holy apostles to be protected, defended, and freed by this holy see, so that, just as they were first established by their arrangement under the ordinance of the Lord, so by the protection of this holy see—to whose disposition they reserved their cases and judgments—they may in future times be always free from all perversities. Hence those who have acted otherwise concerning the brothers than they knew would please the rulers of this see are blamed.

Causa IX

GRATIAN. A certain archbishop marked by a sentence of excommunication ordained several clerics of another metropolitan; he deposed a certain chaplain of his suffragan without consulting him and ordained another in his place. (Qu. I.) It is asked whether an ordination performed by excommunicated persons can in any way be held valid. (Qu. II.) Second, whether a bishop, archbishop, primate, or patriarch is permitted to ordain the clerics of another without their proper letters. (Qu. III.) Third, whether an archbishop can condemn the clerics of his suffragan without consulting him or absolve those condemned.

Question I

GRATIAN. That an ordination celebrated by excommunicated persons possesses absolutely no force and is not even to be called a consecration is attested by Gregory, [book III, letter 20], who says:

C. I. What is performed by excommunicated persons cannot be called a consecration.

We can in no way call that a consecration which was celebrated by excommunicated men.

[PALEA C. II.

Excommunicated persons lay on hands illicitly, because they do not possess the power of ordaining. But where the laying on of hands is illicit, a wound is inflicted. Hence it is necessary to repeat what is by no means proved to have been conferred.]

[PALEA C. III.

Hence Pope Damasus says in letter IV: Through an illicit laying on of hands, those who appeared to have received something had a wounded head; and where a wound has been inflicted, it is necessary to apply medicine by which the inflicted blemish may be healed—that is, it is necessary to repeat what is by no means proved to have been lawfully performed or conferred, if it ought to be perfect. For how one who received an honor from one who did not possess the power to give it lawfully can retain that honor I cannot discover.] GRATIAN. But "excommunicated persons" are here to be understood as those who contracted the penalty of excommunication in their very ordination, who were never among the number of Catholics. But those who were first reckoned among Catholics, if they were afterward marked by a sentence of excommunication, nevertheless their ordinations are mercifully tolerated by the church. Hence Urban II writes, saying:

C. IV. Ordinations performed by excommunicated persons, not simoniacally, are tolerated from mercy.

Those ordained by excommunicated bishops who were nevertheless formerly Catholics, if indeed they did not receive the orders themselves simoniacally, and if it shall be established that the bishops themselves were not simoniacs, and in addition if their more religious life and prerogative of learning shall have appeared to merit it, you may permit, after imposing the penance you judge fitting, to remain in the orders which they received. But we do not permit them to ascend to higher ones unless the greatest necessity and utility demand it and their holy conduct merits it. GRATIAN. But that statement of Gregory too is to be understood concerning those excommunicated by name, whose

ordinations are void if their condemnation was not unknown to those being ordained. Hence the same Urban says, [in the Synod of Piacenza, c. 9 and following]:

C. V. Those excommunicated by name and those who invade the sees of others cannot ordain others.

We judge void the ordinations performed by heresiarchs excommunicated by name and by those who invaded the sees of Catholic bishops still living, unless they can prove that, when they were ordained, they did not know those men had been condemned. § 1. But those who were consecrated by bishops once indeed ordained in Catholic fashion but separated from the Roman Church in schism, we command, when they return to the unity of the church, to be received mercifully with their proper orders preserved, if life and knowledge commend them. § 2. But henceforth whoever permits himself to be ordained by the aforesaid schismatics, adversaries of the holy Roman Church, shall in no way be held worthy of this pardon. § 3. Although, from regard for mercy and under the compulsion of great necessity, we have established this dispensation in sacred orders, nevertheless we wish no prejudice to be done to the sacred canons, but let them retain their proper strength, and when necessity ceases let that also cease which was done because of necessity. For where the slaughter of many lies, something must be withdrawn from severity. GRATIAN. An election too, unless it was made by Catholics, is proved to be void. Hence Gregory writes to the people of Milan, [book VIII, letter 65]:

C. VI. Let an election which is proved not to have been made by Catholics be void.

We offer our consent under no reasoning to a man who is not elected by Catholics, nor, if it was done by anyone's usurpation, do we receive him into the place or order of priest.

Question II

GRATIAN. PART I. That a bishop or any of his superiors ought not to ordain the clerics of another without proper letters, Pope Callistus writes, [letter II to the Bishops of Gaul], saying:

C. I. Let no one presume to judge or excommunicate a parishioner of another church.

Let no one usurp the boundaries of another, nor presume to judge, ordain, or excommunicate the parishioner of another, because such a judgment, ordination, excommunication, or condemnation will neither be valid nor possess any force, since no one will be bound or condemned by the sentence of another judge, but only by that of his own. Hence the Lord also speaks in the Gospel, saying: "Do not transgress the ancient boundaries which your fathers established."

[PALEA. C. II.

Hence Pope Urban: It was resolved that henceforth no priest be permitted to receive for penance anyone committed to another priest without the consent of the one to whom he first committed himself, except through the ignorance of the one to whom the penitent first confessed. But one who has presumed to act contrary to these statutes will lie under danger to his rank.]

C. III. No one is permitted to do anything in the church of another unless that person summons him.

The same, [Callistus, letter II]. Let no primate, no metropolitan, and none of the remaining bishops approach another's city or enter a possession which does not pertain to him, and, over the parish of another bishop, arrange, ordain, or judge anything there unless summoned by him to whose right it is known to belong, if he wishes to possess the honor of his rank. But if he has presumed otherwise, he will be condemned, and not only he but those cooperating with and consenting to him, because just as ordination, so also judgment and the administration of other matters are prohibited to them. For one who will not be able to ordain, how will he judge? Without doubt he will by no means judge or be able to judge.

[PALEA.

C. IV. Concerning the same.

Likewise from the Council of Nantes, c. 1. On Sundays or feast days, before priests celebrate Masses, let them ask the congregation whether there is a parishioner of another in the church who, having despised his own priest, wishes to hear Mass there. If they find him, let them immediately cast him out of the church and compel him to return to his own parish.]

[PALEA.

C. V. Concerning the same.

Likewise from the same Council of Nantes, c. 2. Let no priest or deacon dare to receive at Mass one belonging to another congregation, unless he is on a journey or has an appointed proceeding there.]

C. VI. Let a bishop not approach the ordination of the clerics or churches of another bishop unless invited by him.

Likewise from the Council of Antioch, [c. 13]. No bishop ought to dare to make passage from one province to another and ordain any persons in churches or bring them forward to sacred ministry. Nor shall a bishop be drawn there by others unless perhaps he goes after being requested by letters not only from the metropolitan but from all the bishops of that province who are with him. But if, with no one inviting him, he arrives inordinately and presumes either to ordain any persons or attempts to usurp any persons belonging to that church who do not pertain to him, all that he has done will indeed be void and empty, while he himself shall pay worthy penalties for this undisciplined act and irrational undertaking, as one deposed by the holy synod and already condemned for presumption of this kind.

C. VII. Let a bishop by no means approach the ordination of a church which was not committed to him.

Likewise from the same, [c. 22]. A bishop ought not to intrude into another city which is proved not to be subject to him, nor into a region which is known by no means to pertain to his care, to ordain anything or establish priests or deacons pertaining to other bishops, except perhaps with the will and testimony of the bishop of the proper region. But if anyone of these has wished to do such a thing, an ordination of this kind will indeed be void, and let the things which he wickedly usurped be reproved

by the synod. For if he could not ordain, let him by no means presume to judge one belonging to others.

C. VIII. Let bishops not approach churches which are outside their diocese.

Likewise from the Synod of Constantinople, [I, c. 2]. Let bishops who are outside a diocese not approach churches which are outside their boundaries, nor confound and intermingle the churches. According to the established rules, let the bishops of Alexandria govern only the things which are in Egypt; but let the bishops of the East exercise care only for the East, with the honors of the primacy of the church of Antioch, which are contained in the rules of the Nicene Synod, preserved. And let the bishops of the Asian diocese govern the things which are in Asia and which pertain only to the Asian diocese. But let the bishops of Pontus have care only for the Pontic diocese, and those of Thrace only for Thrace itself.

C. IX. Concerning the same.

Likewise. Bishops who have not been invited ought not to pass beyond a diocese for the ordaining of any persons or the administration of any ecclesiastical cases, with the rule written above concerning each diocese preserved. For it is manifest that throughout each individual province the provincial synod ought to administer and govern all things, according to those things which were determined in the Nicene Synod. PART II. GRATIAN. By these authorities all bishops are prohibited from ordaining the clerics of another. But it is asked: if it happens that they distribute sacred orders to any persons, can those ordained be received by their own bishops in their proper orders? Concerning these matters Pope Urban writes thus to Hugh, Archbishop of Lyon:

C. X. Clerics ordained by the bishop of another parish can be received by their own bishop in their orders.

Your religious prudence can receive with the honor of their ranks the clerics of the parish of Lyon whom, as you showed by the information in your letters, bishops of another parish ordained contrary to the statutes of the canons, if it shall be established that otherwise they were ordained canonically and without any depravity, provided that you perceive their approved life to merit this indulgence. For we read that Saint Epiphanius, a bishop, ordained certain clerics from the diocese of Saint John Chrysostom, which the holy man would by no means have done if he had weighed that harm would come to them. Therefore, after recognizing the penance imposed as a satisfaction because of the church which they offended, those whom your moderation has judged should be received you shall receive, from regard for compassion, each in his own honor, with the discipline of the holy canons preserved in all things.

Question III

GRATIAN. That an archbishop can condemn the clerics of his suffragan without consulting him or absolve them seems able to be proved as follows. Just as the churches of an entire episcopate are in the power of the bishop, so the churches of an entire archiepiscopate pertain to the diocese of the archbishop. For bishops are called by the metropolitan into a share of solicitude, not into the fullness of power. For he thus imparts his functions to them without taking his own power away from

himself. Hence they are permitted to do nothing without his counsel, as is read in the Council of Pope Martin, [c. 4]:

C. I. Neither should bishops do anything without the consent of the metropolitan, nor he without their consent.

Throughout the individual provinces the bishops ought to acknowledge their metropolitan and he to undertake the care of the primacy, while the remaining bishops are to do nothing apart from him, according to what is contained in the canon established by our Fathers in antiquity. For this reason the metropolitan too shall presumptuously undertake nothing without the counsel of the others.

C. II. Without the knowledge of the metropolitan a bishop shall do nothing outside his own diocese.

Likewise from the Council of Antioch, [c. 9]. Throughout the individual provinces each bishop ought to know that the metropolitan bishop who presides has undertaken the care and solicitude of the whole province. For this reason let those who have cases assemble at the metropolitan city. Therefore it was resolved both that he excel in honor and that the remaining bishops do nothing beyond their bounds without him, according to the ancient canon of our Fathers, except only what pertains to each individual church throughout its own diocese. For each bishop ought to possess power over his own diocese, so that he may rule and govern according to the reverence fitting to each and exercise providence for the whole region which is under his city, so that he is also permitted to ordain priests and deacons by approved judgment and to adjudicate the individual cases of his region with moderation and weight. But he is permitted to do nothing beyond this without the knowledge of the metropolitan bishop, nor shall the metropolitan conduct anything without the counsel of the remaining priests.

GRATIAN. Unless perhaps the bishops have neglected to ordain stewards in their church. Hence it is read in the Seventh Synod, [c. 11]:

C. III. Let the metropolitan appoint stewards whom a bishop has neglected to have.

Since we are debtors to observe all the sacred rules, we ought by every means to preserve inviolate the one which says that there ought to be stewards in each church. And if indeed each metropolitan has appointed a steward in his own church, it is surely well. But if not, by their own authority the bishops of Constantinople have permission to place stewards over his church. Likewise metropolitans too have this permission if the bishops who are under them have not taken care to establish stewards in their churches. The very same is also to be observed in monasteries. GRATIAN. The same is proved by the example of the Apostle, who handed the impenitent Corinthian fornicator over to Satan and afterward reconciled him, once penitent, to the church, writing only this to the Corinthians in the first and second letter: that they not communicate with the excommunicated man and, when he had been reconciled, be joined to him in associated charity. But the contrary is proved by the authority of many. For Pope Hyginus says, [letter I, c. 2]:

C. IV. A metropolitan shall not hear the cases of any of the bishops without their presence.

With the privilege of the Roman Church preserved in all things, let no metropolitan hear the cases of any of the bishops without the attendance of all the remaining bishops of the province, because proceedings otherwise conducted than those examined in the sight of all of them will be void; and if he has done it, let him be restrained by his brothers.

C. V. Concerning the same.

Likewise Pope Anicius, [to the Bishops of Gaul, c. 1]. In accordance with the statutes of the apostles, an archbishop shall do nothing concerning the cases of the bishops or other common cases without the counsel of all of them, nor shall they undertake anything, except to the extent that it pertains to their own parishes, without his consent, because the Most High rejoices in such concord and is glorified in His members.

C. VI. Concerning the same.

The same, [in the same letter, c. 3]. But if any of the metropolitans has become swollen with pride and wishes, without the presence or counsel of all the bishops of the province, to conduct either their cases or other cases—except only those which pertain to his own parish—or to burden them, let him be strictly corrected by all, lest he dare to presume such things henceforth. But if he appears incorrigible and disobedient to them, let his contumacy be reported to this apostolic see, to which it has been commanded that all judgments of bishops be referred, so that vengeance may be exacted from him and the others may have fear.

C. VII. Concerning the same.

Likewise Pope Callistus, [to the Bishops of Gaul, letter II, c. 3]. Let no primate or metropolitan presume to excommunicate or judge a diocesan's church or parish, or anyone from his parish, or to do anything without his counsel or judgment; rather, let him observe what was established by the apostles, the Fathers, and our predecessors and confirmed by us, namely: if any metropolitan bishop attempts to do anything beyond his own proper parish—except what pertains solely to it—without the counsel and will of all the bishops of the province, he will lie under danger to his rank, and what he has done will be void and empty. But whatever it shall be necessary to do or arrange concerning the cases of the bishops of the province and their churches and clerics, and the necessities of secular persons, let this be done with the consent of all the bishops of the province, not with any haughtiness of domination but with the most humble and concordant administration, as the Lord says: "I came not to be ministered to but to minister," and elsewhere: "He who is greater among you shall be your minister." Likewise, let the bishops of the province themselves do all things with his counsel—except to the extent that they pertain to their own parishes—in accordance with the statutes of the holy Fathers, so that with one mind and one mouth the holy Trinity may concordantly be glorified forever.

C. VIII. Let a metropolitan do nothing in the parish of a suffragan without his counsel.

Likewise Nicholas to Rudolf, Archbishop of Bourges. Our brother Sigebod, Archbishop of Narbonne, has complained to our apostolate that, against his will, you compel his clerics to come to your

judgment and, without consulting him, arrange matters concerning property pertaining to his church as though by the right of your patriarchate, although neither does antiquity—to which the Fathers decreed reverence—possess this practice, and the authority of the sacred canons utterly prohibits it, unless perhaps they have appealed to you as to their patriarch concerning cases which cannot be terminated before him, or, if their bishop has died, they have wished the property of their church to be administered by your judgment. For we determine that primates or patriarchs possess no privilege beyond the remaining bishops except to the extent that the sacred canons grant and ancient custom conferred upon them in antiquity, so that in accordance with the Nicene rules their privileges may be preserved for the churches, except if the apostolic see shall have decreed to honor some church or its ruler with any special privilege.

C. IX. Concerning the same.

Likewise Bede on the Apocalypse: "And write to the angel of the church of Ephesus." He writes to the bishop, from whose hand the sins of his subjects are required, and the subjects ought not to be judged without his counsel. GRATIAN. For the Roman Church alone is able by its authority to judge concerning all; but no one is permitted to judge concerning it. Hence Pope Nicholas, [to Emperor Michael, in the letter whose beginning is "We Had Proposed"]:

C. X. The judgment of the apostolic see is to be reconsidered by no one.

It is certainly evident that the judgment of the apostolic see—than whose authority there is none greater—is to be reconsidered by no one, nor is anyone permitted to judge concerning its judgment, according to what Pope Innocent says when writing to Rufus and the other bishops established throughout Thessaly: "No one ever boldly brought opposing hands against the apostolic summit—concerning whose judgment it is not permitted to reconsider—no one remained rebellious in this except one who wished judgment to be given concerning himself"; and blessed Pope Gelasius: "Nor did the canons ever command that judgment be given concerning its judgment"—that is, the judgment of the Roman Church—"and they established that its sentence ought not to be dissolved, whose decrees they commanded rather to be followed."

C. XI. Apostolic authority releases those condemned or excommunicated by others.

Likewise Patriarch Anastasius to Pope Felix [II]. Your apostolic see has always possessed the permission authoritatively to restore by its own authority those unjustly condemned or excommunicated, to return all their things to them, and to punish by apostolic privilege those who condemned or excommunicated them, just as we know was also done in our own and earlier times.

C. XII. Concerning the same.

Likewise, [in the same place a little below]. It was decreed by the ancient rules that whatever was done concerning their complaints or accusations, although in provinces situated remotely or far away, was not first to be examined or accepted before it was brought to the knowledge of your nurturing see, so that by its authority, according to what the pronouncement had been, it might be invalidated or confirmed.

C. XIII. Let the first see be subject to no one's judgment.

Likewise Pope Innocent. No one will judge the first see, which desires to temper justice. For the judge will be judged neither by the emperor, nor by all the clergy, nor by kings, nor by the people.

C. XIV. Concerning the same.

Likewise Symmachus. God wished the cases of other men to be terminated through men, but He reserved the prelate of this see to His own judgment without question. He wished the successor of the blessed apostle Peter to owe his innocence to heaven alone and to possess an inviolate conscience for the investigation of the most subtle examiner. Do not suppose that those souls have no fear of an investigator which God, beyond the rest, reserved for His own examination. Before Him the guilty man has no aid from the splendor of his pleading when he uses as witness of the very deeds the one whom he has as judge. You may perhaps say, "Such will be the condition of all souls in that adjudication." I will reply: to one it was said, "You are Peter, and upon this rock I will build my church, and whatever you loose upon earth will be loosed also in heaven." And again, by the voice of the saints, the dignity of the pontiffs of his see was made venerable throughout the whole world, since whatever belongs to the faithful everywhere is subjected to it, since it is designated the head of the whole body. Concerning this it appears to me to have been said through the Prophet: "If this is humbled, to whose aid will you flee? And where will you leave your glory?"

C. XV. Concerning the same.

Likewise Pope Anterus, [to the Bishops of the Provinces of Baetica and Toledo]. The deeds of our subjects are judged by us, but our deeds are judged by the Lord. § 1. Those who corrupt the life and morals of the good are worse than those who plunder the substance and estates of others.

C. XVI. Concerning the same.

Likewise Gelasius, [to the legate Faustus]. These are the canons which wished appeals of the whole church to be carried to the examination of this see. But they decreed that appeal ought never at all to be made from it, and through this that it should judge concerning the whole church, that it should come to no one's judgment, nor did they ever command that judgment be given concerning its judgment; and they established that its sentence ought not to be dissolved, whose decrees they commanded rather to be followed.

C. XVII. Concerning the same.

The same to all the Bishops. The whole church throughout the world knows that the sacrosanct Roman Church possesses the right to judge concerning all and that no one is permitted to judge concerning its judgment. Indeed, appeal is to be made to it from any part of the world, but no one is permitted to appeal from it. § 1. Nor do we pass over the fact that the apostolic see, without any preceding synod, possessed the faculty both of releasing those whom an iniquitous synod had condemned and of condemning, with no synod existing, those whom it was fitting to condemn; and this assuredly on account of its primacy, which the blessed apostle Peter both always held and will hold by the voice of the Lord.

[C. XVIII.]

The same to the Bishops established throughout Dardania. The whole church throughout the world knows that the see of the blessed apostle Peter has the right to release those bound by the sentences of any pontiffs whatsoever, inasmuch as it possesses the right to judge concerning every church, etc.

C. XIX. Concerning the same.

Likewise Pope Sixtus [II] to the Bishops of the Spaniards, [letter II, c. 4]. Know that the brothers whom you unjustly condemned through earthly fear have been justly restored by us, and by authority we command that all things which were taken from them be returned to them in their entirety, if you do not wish both you and your princes to be separated from our college and the members of the church.

C. XX. The Pope can ordain the clerics of any church.

Likewise Bishop Stephen to Patriarch Walbert. But now we write to you again, not wishing to infringe the privilege of any church, although by apostolic prerogative we can ordain a cleric from any church: cease now, through jealousy of someone, to delay the bishop of the church of Cumae, because, if you delay and do not hasten to consecrate him after now having been admonished so many times, without doubt he will depart consecrated.

C. XXI. Concerning the same.

Likewise Pope Nicholas to Emperor Michael, [in the letter whose beginning is "We Had Proposed"]. Therefore, through the principal power of the blessed Peter and Paul, concerning which we explained above, we possess the power and right, whenever it shall be necessary, not only to summon to us monks but also any clerics from any diocese whatsoever, and to invite them when ecclesiastical opportunities require it. GRATIAN. But what is undertaken from the rashness of presumption is one thing; what is conducted from the necessity of charity is another. When the suffragans of archbishops have begun to favor the evil of their subjects and have been negligent concerning their correction, then metropolitans are permitted, apart from their will, both to condemn those to be bound and to absolve those to be reconciled. But when bishops, kindled by zeal for divine charity, edify the good by word and example and reprove the vices of the evil with harsh rebuke, metropolitans are not permitted to do or arrange anything in their parish without the counsel of such bishops. Hence at the end of the chapter of Pope Martin it is not said simply, "let him do nothing," but with the qualification, "let him presumptuously undertake nothing without their counsel," so that the vice of presumption, not the office of charity, appears to be condemned. Thus the Apostle too, because he saw the Corinthians negligent concerning the correction of the fornicator, condemned him by his own authority. But John, because he saw the Bishop of Ephesus prepared to correct the vices of his subjects, refused to correct them without his authority, but admonished only him concerning their correction.

Causa X

GRATIAN. A certain layman seeks to separate from diocesan law a basilica built by him; the bishop contends that the church with its entire endowment pertains to his administration; at length the bishop prevails, and, accompanied through the parishes by soldiers, rages cruelly; he strives to usurp

as owed to himself those things which belong to the churches. (Qu. I.) First it is now asked whether the basilica with its entire endowment pertains to the bishop's ordination. (Qu. II.) Second, whether a bishop is permitted to usurp the property of churches. (Qu. III.) Third, what he can exact from his priests under the name of the cathedraticum.

Question I

GRATIAN. PART I. Concerning the first question it is determined thus in the Council of Lérida, [c. 3]:

C. I. Let a basilica which is consecrated not be separated from diocesan law.

If any of the laity desires a basilica built by him to be consecrated, let him by no means dare to separate it from diocesan law under the appearance of a monastery where no congregation assembles.

C. II. Let churches with their endowments remain under the bishop's power.

Likewise from the Third Council of Toledo, [c. 19]. Certain persons, contrary to all authority, request churches which they have built to be consecrated in such a way that they judge the endowment which they conferred upon the same church not to pertain to the bishop's ordination. Let what was done in this manner in the past be corrected, so that it may be prohibited from being done in the future, and let all things pertain to the bishop's ordination and power in accordance with the ancient constitution.

C. III. Churches and all their rights pertain to the bishop's ordination.

Likewise from the Second Council of Chalon. It was decreed that all churches with their endowments, tithes, and all their possessions shall remain under the bishop's power and always pertain to his ordination.

C. IV. Let each parish be governed by the bishop's provision.

Likewise Leo IV, [in the letter to the Bishops of Britain, c. 2]. Each parish is to be governed under the provision and protection of the bishop through priests or other clerics whom he himself shall have provided with the fear of God; and it appears to pertain to him by right also to travel around, as shall have appeared necessary to him when ecclesiastical utility compels it.

C. V. Let ecclesiastical property be governed by the bishop's judgment and power.

Likewise from the Council of Antioch, [c. 24]. Whatever ecclesiastical property there is ought to be governed and administered with all diligence and the good faith owed to God, who foresees all things and judges all, under the judgment and power of the bishop, to whom the souls of the whole congregation appear to have been committed.

C. VI. Let founders of basilicas know that they possess no power over church property.

Likewise from the Fourth Council of Toledo, [c. 32]. Let founders of basilicas know that they possess no power over the property which they confer upon those churches, but that, in accordance with the institutions of the canons, just as the church, so also its endowment pertains to the bishop's ordination.

C. VII. Concerning the same.

Likewise from the Council of Orléans, [I, c. 17]. Concerning those things which any of the faithful have offered to parishes in lands, vineyards, bondservants, and peculia, let the statutes of the ancient canons be preserved, so that they remain under the bishops' power. Nevertheless, of those things which come to the altar, let a third part be faithfully conveyed to the bishops.

C. VIII. Of those things which are offered at the altar, let the bishop claim half for himself.

Likewise from the same, [c. 16]. Reading again the ancient canons, we believe that earlier statutes are to be renewed, so that, of those things which are conferred upon the altar as offerings of the faithful, the bishop claims half for himself, and the clergy of the second rank receives half to be administered by it, both from their own estates and from every advantage remaining under the bishops' power.

C. IX. Concerning bishops who despise visiting their diocese and compel clerics to redeem the lodgings owed to visitors.

Likewise from the Council of Toledo. A complaint of the congregations was reported before the holy synod that there are certain bishops who refuse to travel around their parishes during the year to preach or confirm, but who nevertheless demand that those who ought to prepare the lodgings which they would have had to use on the journey redeem them at another price. This twofold infamy of negligence and avarice was a great horror to the holy synod. They therefore established that no one afterward exercise this contrivance of cupidity and that bishops be more solicitous about visiting their flocks.

C. X. Let churches be visited by bishops annually.

Likewise from the Council of Tarragona, [c. 8]. We decree that the order of ancient custom be preserved and the dioceses be visited annually by the bishop; and if perhaps any basilica is found destitute, let its ordainer be instructed to repair it, but let a third part from all things be received by the bishops, as we know was established by ancient tradition. PART II. GRATIAN. But if a bishop, impeded by ill health, cannot visit his dioceses personally, let him commit the office of visitation to others. Hence it is read in the Fourth Council of Toledo, [c. 35]:

C. XI. Let a bishop weighed down by ill health commit the office of visitation to others.

A bishop ought to travel through all his dioceses and parishes in individual years so that he may inquire into what each basilica needs for its repair. But if he himself, either detained by illness or entangled in other occupations, cannot fulfill this, let him send approved priests or deacons to inquire into the revenues and repairs of the basilicas and the life of those ministering. PART III.

GRATIAN. But what visiting bishops ought to inquire from their clerics and what they ought to teach them is read to have been established thus in the Second Council of Braga, [c. 1]:

C. XII. What visiting bishops ought to inquire from their clerics.

It was resolved by all the bishops that, as the bishops travel through the individual churches and dioceses, they first examine the clerics as to how they preserve the order of baptism or of Masses and how they perform each office in the church. And if they indeed find it correct, thanks be to God; but if not, they ought to teach the ignorant and by every means command this, as the ancient canons order: that for twenty days before baptism the catechumens submit to the purification of exorcism, in which twenty days the catechumens are above all to be specially taught the creed, which is, "I believe in God the Father almighty." Therefore, after the bishops have examined or taught their clerics in this way, on another day, when the congregation of that church has been summoned, let them teach them to flee the errors of idols or various crimes, that is, homicide, adultery, perjury, false testimony, and the remaining mortal sins, not to do to another what they do not wish to be done to themselves, and to believe in the resurrection of all and the day of judgment, in which each will receive according to his works. And thus afterward let the bishop depart from that church to another. Likewise Jerome to Pope Damasus, [concerning the offerings of the altar]:

C. XIII. Laymen are not permitted to usurp the offerings of a church.

PART IV. Because priests are accustomed to pray for all whose alms and offerings they receive, with what effrontery do laymen presume either themselves to eat the offerings which Christians offer for their sins or to grant them to others, since they ought not by office to pray for the people? For this reason, glorious Pope, it is fitting to send those presumptuous persons into perpetual excommunication, so that others may have fear and these things may no longer be done in the church.

C. XIV. Let offerings made to altars or crosses by no means be taken away by laymen.

Likewise Pope Callistus [II]. Establishing things consonant with the canons of the holy Fathers, we utterly forbid offerings to be taken away by laymen from the most sacred and most reverend altar of blessed Peter, that of the Savior, and that of Saint Mary Rotunda, or from other altars or crosses of churches; and under the strictness of anathema we prohibit it, and by apostolic authority we prohibit churches from being fortified by laymen or reduced to servitude.

C. XV. Let the offerings of churches not be held under the dominion of laymen.

Likewise Pope Damasus. We altogether prohibit this custom which appears to be increasing against the holy catholic Church: that in no way, ever, at any time, are the offerings which are offered within holy Church to be held under the dominion of laymen. Rather, only priests who appear to serve the Lord daily are permitted to eat and drink them, because in the Old Testament the Lord prohibited the sons of Israel from eating the holy loaves, except only Aaron and his sons, who were far from those loaves which are now offered in holy Church, because those men were under the shadow of the law, while those who now, under the grace of the Holy Spirit, with the Gospel shining throughout the whole world, appear to be brighter. With what effrontery or with what conscience do you wish to

receive offerings, you who are scarcely able to offer prayers to God for yourselves, much less for others? For one who attempts to do what is granted to him under no reasoning does what is depraved and contrary to the Lord's command and brings harm to his own soul. Because it pleased all the holy Fathers and our predecessors that this sanction be made, we similarly wish to persevere in those same things, so that no one dare make void what was established, if he does not wish to persevere in perpetual condemnation. But if anyone has been a rash presumptuous person contrary to this rule of ours and contrary to the rule of the three hundred holy Fathers who established this in the Council of Nicaea, and has afterward attempted to take offerings from sacred churches, let him be bound and condemned under the bond of anathema. All responded: Let it be done, let it be done. GRATIAN. By the foregoing authorities churches with all their property are shown to pertain to the bishop's ordination, and both the churches and their offerings and resources are proved to be immune from the administration of laymen.

Question II

GRATIAN. PART I. But when the resources of a church are said to be placed under the power of bishops, the power of administering is to be understood, not of alienating or squandering. Hence it is read in the Council of Agde, [c. 7]:

C. I. Bishops are not permitted to alienate church property in any way.

Let bishops possess the cottages or bondservants of a church, as the ancient authority of the canons commands, or the vessels of a monastery, as things entrusted to a faithful steward, with the right of the church intact—that is, so that they presume neither to sell nor through any contracts to alienate the property from which the poor live. But if necessity has compelled that, for the necessity or utility of the church, something be alienated either in usufruct or by an indirect sale, let the cause for which it is necessary to sell first be approved before two or three bishops of the province or neighboring bishops, so that, after priestly examination has been held, the sale or transaction which is made may be confirmed by their subscription. A sale or transaction made otherwise will not be valid. But we permit less useful possessions to be furnished for use to strangers or clerics, with the right of the church preserved. [GRATIAN.] In book I of the Code, *On the Most Sacred Churches*, Emperor Justinian: with the cause of captivity evidently excepted.

[C. II.]

Emperor Leo. For it is fitting that those things which pertain to the rights of the most blessed Church be venerably preserved untouched, just as the sacrosanct and religious Church itself. A new constitution. This law has been extended to every venerable place and every college which a pious action established, so that they may not be pledged and may be preserved in perpetuity among those immovable things which are assigned from the imperial house to the aforesaid places. Among other things an exception is made only to the extent that a debt presses. § 1. And if it has surplus vessels and cannot pay from elsewhere, lest any immovable thing be alienated or sold, let them, after proceedings have been held before the one to whom ordination of the place belongs, be sold to other venerable places, or, once melted down, to anyone. But one who receives these things apart from this observance shall be subject to the same penalties which were set forth concerning immovable property. But if the debt cannot be paid from movable things, first let immovable property be given as

a special pledge, the creditor reckoning its fruits to himself both toward the principal and toward interest up to the fourth part of one percent. But if he refuses, then let the administrator of the house, after proceedings have been held without expense before the one by whom he is ordained, swear, with the greater part of those serving there consenting, both that the debt is pressing and that it cannot be paid from movable things. When this has followed, for twenty days let it be publicly known that the property of the church is for sale, so that it may be given to the one offering more, with the price by every means being given for the debt. Otherwise the property is not granted to the buyer, and let this be inscribed: that nothing has been done in this matter to the harm of the divine house. If no buyer is found, let the property, strictly appraised, be given to the creditor in payment, a tenth part of the entire valuation being added to the price and the consent of the ordainer and of the greater part of those serving there being added. Nevertheless, let that property be moderate among the others, with regard given to its quality, quantity, and burden. And let that person be understood here as a creditor who proves that what he loaned proceeded to the utilities of the religious house. § 2. But just as alienation of the property of a church is forbidden, so it is prohibited that any sterile possession or one otherwise burdensome be given to it, as under the name of fiscal burdens. § 3. Likewise, an estate useless because of the burden of fiscal payments is alienated, with proceedings to be completed as above and the same oath furnished, namely, that it is alienated for no other cause except that the immunity of the same venerable house may be preserved. § 4. But they can also exchange with the prince for property greater or equal, if the commonwealth demands this, with a pragmatic form preceding concerning it. § 5. Likewise, they rightly exchange among themselves with the indemnity of each, evidently with the consent of those who are also mentioned above.

PART II. § 6. Perpetual emphyteusis is also permitted concerning this property if the matter is conducted in the presence of those to whom this is assigned by law, with those whose interest is involved swearing that from that contract nothing is done to the injury of the divine house, and with the customary rent of the property itself which existed when it was dedicated to divine right not being diminished except by a sixth part; or if it has been diminished by disaster, then, with the present rent being established, let it be given in emphyteusis. But if the property is indeed valuable yet furnishes little or no rent, it is to be carefully appraised, so that from this a just rent may be established. Only those things, however, are given in emphyteusis which appear suitable for this to the steward and the other governors. § 7. One who makes worse property of this kind which has been leased or received in emphyteusis, or has not paid the canon for two years, can be expelled, yet in such a way that he pays the rent for the whole time and repairs that in which he damaged the property, not to recover anything he expended under the name of improvement. § 8. But if the aforesaid houses possess any ruins which they cannot rebuild, let them be given in perpetual emphyteusis, with the emphyteuta to use the material of the house whose habitation has collapsed, so that the rent may be reduced by a third part from that which was collected while the habitations still stood; or, if he first builds, let half of the rents added there by appraisal be given to the religious house. § 9. But one who receives the aforementioned property, not by a gratuitous title of alienation, apart from the form of the law, shall indeed restore the property with every increase from the intervening time; but concerning what he gave, he shall have no action against the venerable place but against the one who alienated it. But a donee shall restore both the property with every appurtenance and as much again. A creditor also, once the pledged property has been restored, has no action on the loan. One who receives an emphyteusis shall fall from it and not recover what he

gave; indeed, he shall immediately pay what he would have paid if he had contracted lawfully. § 10. But it is said better that actions of this kind are altogether to be denied to the receiver. In book I of the Code, *On the Most Sacred Church*, Emperor Leo: § 11. If the steward of a church foresees that it is expedient that temporary possession in usufruct of certain possessions and estates—urban or rural—pertaining to ecclesiastical right be furnished to anyone desiring it, let its term, which shall have been agreed between the two, or to the day of the life of the one who desires it, be sought; let the steward enter into and record agreements with him who has chosen this, by which both the time within which it was resolved that this be furnished is established and what each has received in exchange is manifest.

[PALEA. C. III.

By furnishing the grace of a benefice of this kind, namely the usufruct of an ecclesiastical estate for a time, but after the established time and their agreement have ended, with the ownership returning to ecclesiastical dominion and right.] But when the period established between them has been completed, or at the time of his death, if this too was agreed, the one who, with a compact intervening, received possession of ecclesiastical property and the usufruct of other revenues for the sake of holding it shall leave to the church, together with the ownership of those estates, the immovable property, their tenant farmers, and bondservants, revenues not less than those of another quantity as great as what he had received. For unless the agreements were entered into under this condition, we decree that they too are not valid. § 1. A new constitution. This furnishing of use has a place in every religious house. When it has ended, let both properties come by full right to the aforesaid house, and let not even the property which is given in exchange be burdened with greater tribute. § 2. Under whatever other modes it is permitted, certain persons are forbidden to receive property of this kind, such as its steward and his relatives.

C. IV. In what manner precarial grants of ecclesiastical property ought to be made.

Likewise from the Council of Mettis. Let no one presume to make precarial grants from ecclesiastical property unless, to the extent that a suitable quality is given from his own property, they receive double from the property of the church, in the name only of those who gave it, if they wish to hold their own and ecclesiastical property in usufruct. But if they relinquish their own property at present, let each take threefold from ecclesiastical property in usufruct, in his own name only, because it is fitting for each so to treat it as an administrator of another's property, not as a giver of his own. § 1. The holy synod also decreed, and the imperial authority announces, that no one be compelled by any power to make a precarial grant from property dedicated to God and His saints, since reason and practice maintain that no one is compelled, against utility and reason, to make a benefice from his own property for one to whom he does not wish it. § 2. Nor shall any person presume to make exchanges of ecclesiastical property or bondservants without permission and royal consent.

[PALEA.

C. V. Concerning the same.

Likewise from the Council of Beauvais. Let precarial grants be renewed from five years to five years according to ancient custom and authority.]

[PALEA.

C. VI. Concerning the same.

Likewise from the Council of Carthage. Concerning precarial grants which were made unreasonably by rulers of churches, and by which they bound themselves and their successors under a grave penalty so that their deeds could not be dissolved, we instruct that no successor be bound under the penalty of his predecessor, but that it be granted to his own providence that, if his predecessor unreasonably distributed property of the church, it be recalled by him to the right of the same church.]

C. VII. Let the bishop possess the power to administer the property of the church.

Likewise from the Council of Pope Martin, [c. 16]. PART III. Let the bishop possess power over the property of the church, so that he may administer it to those having necessity with all reverence and fear of God. It is also fitting for him to participate in the things which are necessary, if nevertheless he or the brothers who are with him need anything, so that they may suffer necessity in no way, according to the holy Apostle, who says: "With food and covering, we are content with these." But if the bishop wishes to usurp ecclesiastical property for his own desires, or gives power to brothers, sons, or any of his relatives so that through them the property of the church is secretly harmed, he ought to be answerable to the council. If otherwise, the bishop or the priests or deacons who are with him are to be accused because they gather for their own uses those things which come from revenue or from any act of the church, defraud the poor, and destroy them with hunger; these are to be corrected in accordance with what shall have been ordained by the holy council. PART IV. GRATIAN. But if, contrary to this prohibition, it happens that a bishop sells any of the church's property, it is decreed both that the property itself is to be restored to the church and that he himself is to be cast from his rank. Hence it is read in the same Council of Pope Martin, [c. 14]:

C. VIII. Concerning a bishop who sells the property of a church under no necessity.

If any bishop, compelled by no necessity of ecclesiastical reasoning, has presumed to sell any ecclesiastical property in his clergy, or where perhaps there is no priest, let him be compelled to restore the property itself to his own church and, once heard and convicted, be cast down in the judgment of bishops; and as one guilty of theft or robbery, let him be deprived of his honor.

Question III

GRATIAN. PART I. But what a bishop ought to exact under the name of the cathedraticum is read in the Second Council of Braga, [c. 2]:

C. I. Apart from the honor of the cathedraticum, let a bishop exact nothing throughout the dioceses.

It was resolved that no bishop, traveling throughout his dioceses, take anything else throughout the churches apart from the honor of his chair, that is, two solidi, nor usurp for himself a third part from any offering of the people made in parochial churches; rather, let it be preserved for the repair of the

church and let an account be made to the bishop in individual years. For if the bishop takes that third part, he has taken away the light and sacred roofs of the church. Likewise, let parochial clerics not be compelled in servile fashion to serve the bishop in any works, because it is written: "Not as lording it over the clergy."

C. II. Let the third part which the bishop was accustomed to receive be used for the repair of basilicas.

Likewise from the Council at Marech. It was indeed decreed by the ancient canons that the bishop should obtain a third from the parochial churches, although his own resources can most fully suffice for him. It was resolved by this holy council that no bishop of the province of Lusitania presume to take a third from any parochial church, but let those things which he could have obtained from there be used for the repair of basilicas.

C. III. Let bishops not receive the third unless they wish to repair ruined churches.

Likewise from the Council of Toledo, [XVI, c. 5]. The unity of our assembly decrees and establishes that, if bishops believe that the thirds which the ancient canons judged bishops should have from their parishes are to be exacted, the ruined churches are to be repaired by the bishops themselves. But if they prefer to yield them, the repair of the same basilicas is to be applied by the ministers of those churches under the care and solicitude of their pontiff. But if all the churches have either been unharmed or those which were ruined have been repaired, if each bishop wishes to obtain the thirds owed to him in accordance with the institutions of the ancient canons, he will have complete power to do so, yet in such a way that, apart from those thirds, no bishop exact anything from the parochial churches for royal requisitions, nor presume to give anyone anything from the estates of those churches as a stipend. § 1. But we have also judged it necessary to establish this: that several churches are by no means to be committed to one priest, because by himself he is able neither to discharge the office throughout all the churches nor to expend the necessary care upon their property. We command this under the following reasoning: that a church which has up to ten bondservants shall have a priest over it, but one which has fewer shall be joined to other churches. If any of the bishops despises this institution of ours, let him know that he is punished with excommunication for the space of two months.

C. IV. Concerning the same.

Likewise Pelagius to the illustrious Cresconius. We wish you by every means to guard this: that no bishop of Sicily presume to receive more than two solidi under the name of the cathedraticum from the parishes pertaining to him, nor compel the priests or clergy of their parishes to prepare banquets for them beyond their means.

C. V. Let no number be imposed upon those to be baptized, nor let the cathedraticum be exacted beyond ancient custom.

Likewise Pope Gelasius to Bishop Fabian. Nor is it justly believed that a number is to be imposed upon those to be baptized, since as many as have sought it or hastened to regeneration are not to be repelled according to the will of another. And therefore, brother, you will by every means remove a superfluous constitution of this kind, so that each may be baptized either in the church neighboring

him or in one chosen according to the judgment of his own mind. Know also that the cathedraticum is to be exacted from the priest of that place no further than shall be established to belong to ancient custom, and concerning those things which on the day of dedication shall have been conferred by the devotion of those making offerings, you will preserve the custom which is generally prescribed for all churches. PART II. GRATIAN. The cathedraticum which by these authorities bishops are permitted to exact is to be understood as apart from the half or third part of the offerings which, according to the varied custom of the churches, is owed to the bishop by the foregoing authorities; nor is that part to be understood generally concerning all offerings, but either those of the anniversary of dedication or also those of certain solemn days, according to what shall have been agreed between the bishop and the priest at the time of dedication. But concerning those bishops who rage cruelly through their parishes, it was established thus in the Third Council of Toledo, [c. 20]:

C. VI. Let bishops exact nothing from parochial priests beyond ancient custom.

Because we have learned that bishops rage through their parishes not in a priestly manner but cruelly, and since it is written, "Be an example to the flock, not as lording it over the clergy," but they inflict exactions or losses upon their diocese, we therefore judge that—except for what the constitutions of the ancients command bishops to have from the parishes—the other things which have hitherto been presumed be denied to them; that is, let neither priests nor deacons be wearied by forced services or any assessments, lest we appear to be called exactors rather than pontiffs of God in the church of God. But let those clerics, both local and diocesan, who know themselves to be burdened by the bishop not delay in carrying their complaints to the metropolitan, and let the metropolitan not delay in turning away presumptions of this kind.

C. VII. Let bishops exact provisions from parishioners only with charity.

Likewise from the Second Council of Chalon, [c. 14]. Certainly care must be taken lest, when bishops travel through their parishes, they exercise a certain tyranny not only toward subjects but also toward associates; lest—which God forbid—they exact provisions from them not with charity but with a certain rashness of boasting, nor with the giving of thanks but with a certain judicial contrivance. It must by every means be observed that, if at any time the necessity of traveling through the parishes falls upon them, they apply themselves, in confirming men, inquiring into matters worthy of amendment, preaching the word of God, and gaining souls, rather than in plundering and despoiling men and scandalizing brothers. And if at any time something is to be received by them from their subjects or brothers for carrying out their ministry, they ought above all to observe this: that they scandalize or burden no one. Such discretion, therefore, is to be maintained in this matter that a preacher of the word of God, where his own resources are lacking, receives from the brothers, and the same brothers are not burdened by his power, after the example of the apostle Paul, who, lest he burden anyone, sought his sustenance by craft and by his hands.

C. VIII. Let a bishop not presume to receive more than two solidi from parochial churches.

Likewise from the Eighth Council of Toledo, [c. 4]. Finally, among the other things which it fittingly became us to consider by common consent, it was also fitting most carefully to discern the complaints of the parochial priests of the province of Galicia, which necessity, as we have learned,

finally compelled to be brought to public examination against the rapacity of their pontiffs. For these pontiffs, as a manifest inquiry disclosed, burdening the parochial churches with indiscriminate governance, while they frequently persist in superfluous exactions, are proved to have brought certain basilicas almost to the emptying of their last strength. Therefore, lest what is established to have hitherto been presumed inordinately be done henceforth, let each bishop of the aforesaid province request that no more than two solidi be furnished to him by an annual payment throughout the individual dioceses or basilicas, in accordance with the Synod of Braga, yet with the basilicas of monasteries separated from the expense of this payment. § 1. But when a bishop visits a diocese, let him be burdensome to no one through the multitude of his company, nor ever exceed a number of fifty for his transport, or have permission to remain in each basilica for more than one day. § 2. But whichever of the same pontiffs presumes that action is to be taken otherwise than we have decreed will without doubt lie under the correction of the canons, as a transgressor of synodal constitutions and a corrupter of the edicts of the ancient Fathers.

C. IX. Let priests not be burdened beyond measure by their bishops.

Likewise Gregory to the Bishops of Sicily, [book XI, letter 20]. It was reported to us that, in the times of my predecessor of holy memory, it was arranged through the deacon Servusdei, who then exercised care for the ecclesiastical patrimony, that the priests established throughout all your dioceses ought by no means to be burdened beyond measure whenever you go forth to sign infants. For a sum had been fixed, with you consenting, as I hear, which ought to be given by those priests for the labor of the clerics. And what was resolved then, as is now said, is by no means observed. Hence I admonish your fraternity not to endeavor to be burdensome to your subjects.

C. X. Let banquets be prepared for bishops according to the modest means of the place.

Likewise Pope Pelagius to the illustrious Cresconius. We by no means wish your greatness to be ignorant that the Bishop of the city of Syracuse, among the other things which he pledged on the page of his guarantees, is read also to have specially promised this under the interposition of a lawful penalty: that he would never seek from any priest of his diocese more than two solidi under the name of the cathedraticum, nor through any other occasion would he do anything to his detriment. Let your greatness not cease to guard this with competent solicitude not only concerning the aforesaid bishop but concerning the persons of all the bishops of Sicily; nor let the dinners themselves be made enormous, but let a banquet of reception be prepared for each bishop who comes for confirmation according to the modest means of the place, because we neither wish losses to be inflicted upon the poor under that pretext nor permit it under any reasoning.

Causa XI

GRATIAN. A cleric conducted a dispute concerning estates against another cleric, whom he wished to bring before a civil judge; the defendant wished to stand only before an ecclesiastical judge. But the plaintiff, through the power of the civil judge, cast him from his possession. When the bishop heard this, he suspended him from office; he, despising the sentence of his bishop, administered his office. When this was learned, the bishop gave a sentence against him without hope of restoration. (Qu. I.) Here it is first asked whether a cleric is to be brought before a civil judge. (Qu. II.) Second, if

he is not to be brought, whether this fault is worthy of suspension. (Qu. III.) Third, if it was not worthy, whether one who despises the sentence of his bishop ought to be irreparably deposed.

Question I

GRATIAN. PART I. That a cleric is not to be accused before secular judges Pope Caius writes, [letter to Bishop Felix, c. 2], saying:

C. I. Let no cleric be summoned before a secular judge.

Let no one ever presume to accuse a bishop or the remaining clerics before a secular judge.

[PALEA. C. II.

Let none of the judges by himself distrain or presume to condemn a priest, deacon, any cleric, or juniors of the church without the pontiff's permission. But if he has done so, let him be sequestered from the church to which he is known to have inflicted injury until he recognizes and amends his guilt.]

C. III. Concerning the same.

Likewise Pope Marcellinus, [letter II]. Let no one presume to draw a cleric of any order to secular judgment without the permission of his pontiff, nor let a layman be permitted to accuse any cleric.

C. IV. Each person is to be judged by those whom he has chosen as judges for himself.

Likewise from the Council of Nicaea. There ought to be no other judges except those whom the one who is assailed has personally chosen, or those whom this holy see with his consent, or its primates by authority of this holy see, have delegated.

C. V. No cleric is to be dragged to secular judgments.

Likewise Valentinian, Theodosius, and Arcadius. By a perpetual law we decree that no bishops or those who serve the necessities of the church be dragged to the judgments either of ordinary or extraordinary judges. They have their own judges, nor do they share anything with these public laws. Likewise: § 1. Constantine, presiding in the holy synod which was assembled at Nicaea, when he perceived that the complaint of certain persons was to be brought before him, said: You can be judged by no one, because you are reserved for the judgment of God alone.

[PALEA.

C. VI. Concerning the same.

Likewise from the First Council of Mâcon, c. 8. Let no cleric presume in any way to accuse another cleric before a secular judge or draw him to plead a case; rather, let every matter of clerics be concluded either before his bishop or before priests in the presence of the archdeacon. But if any cleric has delayed fulfilling this, if he is of lower rank, let him receive one less than forty blows; but if he is more honorable, let him be punished with confinement for thirty days.]

[PALEA.

C. VII. Concerning the same.

Likewise Marcellinus, letter II to the Eastern Bishops. Whatever contentions have arisen among Christians, let them be carried to the church and terminated by ecclesiastical men. And if they refuse to obey, let them be excluded from the thresholds of the church until they obey.]

C. VIII. A bishop shall be brought before a civil judge neither for a civil nor a criminal case.

Likewise Boniface to the Bishops of Gaul. Let no bishop be brought or presented before any judge, whether civil or military, either for a civil or a criminal case. For a magistrate who has dared to order this will be struck with condemnation by loss of his belt of office.

C. IX. No cleric is to be examined in public.

Likewise Pope Sylvester, [in the Roman Synod, c. 14]. Let no one receive the testimony of a cleric against a layman; let no one presume to examine any cleric in public, but only in the church. [GRATIAN.] In book I of the Code, title *On Bishops and Clerics*, Emperor Theodosius: Let a bishop be demanded for testimony neither by honor nor by the laws. § 1. Likewise: It is not fitting that a bishop be admitted for giving testimony, for both his person is honored and, when his dignity is excepted, that of a priest is confounded. A new constitution. Let him not be demanded for testimony under oath, but only with the Gospels placed before him. § 1. Likewise: But let the judge send to him some of his ministers, so that, with the sacrosanct Gospels placed before them, they may say what they know, in the manner fitting priests.

C. X. Let a cleric who brings another cleric before a civil judge be anathema.

The same. If any cleric, accusing a cleric, has entered the court, let him be anathema. GRATIAN. It is to be understood: if he has sought cognizance of public judgments; for it does no harm to request an episcopal judgment from the emperor. Hence it is read in the Eighth Council of Carthage:

C. XI. Let one who seeks cognizance of a public judgment from the emperor be deprived of his proper honor.

It was resolved that whoever seeks cognizance of public judgments from the emperor be deprived of his proper honor. But if he has sought an episcopal judgment from the emperor, let it not harm him. GRATIAN. Thus also the following authorities are to be understood, by which it is commanded that only clerics take cognizance of the cases of clerics. Hence Pope Gelasius writes to Count Zeia:

C. XII. A cleric is not to be heard by a secular judge.

It ought always to be pleasing to Christians that what is requested from their dignity be furnished, because it is not fitting to deny a benefit to those serving God. Sylvester and Faustinian, who confess that they have been clerics from their cradles, complain that they are oppressed by Theodora through violence: that although they say that they are freeborn and, with God as author, absolved from the bonds of their former condition, they are being consigned again to the lot of the worst servitude; and that by royal authority, contrary to the public laws, although they were long ago bound by the clerical belt, they were summoned through the archdeacon of the city of Grumentum, although it is established that one who assails a soldier of heaven ought to follow only his tribunal. And therefore,

beloved, with the expression of the salutation due, I commend the aforesaid clerics to you, so that, if their adversaries despise coming to the judgment of the delegates, they may be fortified by the protection of your highness, lest either deception or violence hostile to the laws impose anything of necessity upon them, because one who flees judgment appears to distrust justice.

C. XIII. Let a cleric be summoned only to the judgment of bishops.

The same to Bishops Crispus and Sabinus. Sylvester and Faustinian, clerics of the church of Grumentum, complained to us in a tearful disclosure that the freedom granted to them by the kindness of their master is assailed by the oppression of his heirs, and that they, having served in the office of the clericate almost from their cradles and, even while the manumitter was living, nevertheless having remained established in the same status, are not permitted to devote service to the divine ministries; although, if truth supports their petition, inheritance is taken away by the laws from those opposing the deed of their father and author as unworthy persons, nor are those taking the inheritance permitted to rise up against the judgment of their author. And therefore, dearest brothers, because they also complain that they are oppressed by the archdeacon of the aforesaid church, who, during their absence, promised that they would follow the judgment of a governor, with all things trampled underfoot, and thought his own tribunal was being taken away from those assailed contrary to divine and public laws, let whoever he is who has assailed a cleric come to your judgment, so that the rights of the church, which ancient princes confirmed by continual sanction, may not be denied to the clerics assailed.

C. XIV. Let priests not be accused before a civil judge.

Likewise Alexander to all the orthodox serving Christ the Lord throughout the various provinces, [letter I, c. 1]. It has been reported to the summit of this holy and apostolic see, to which the arrangements of the greatest cases and the affairs of all churches were entrusted by the Lord Himself, as to the head, He Himself saying, "You are Peter, and upon this rock I will build my church," that certain rivals of Christ and plotters against His holy church presume to accuse the priests of God before public judges, although the Apostle commands rather that the cases of Christians be brought to the churches and terminated there. Those transgressing in such a manner have transgressed against their God and do not obey His commands.

C. XV. Let the plaintiff follow the forum of the defendant.

Likewise Pelagius to Benegestus the Defender. By the present authority we command your Experience that, in cases in which any person holding ecclesiastical office stands as plaintiff and is about to sue any layman, he not fail to present his actions before the judge of his own province.

But in those matters in which a person holding ecclesiastical office is sued, with every obstacle to the suit removed, let him resort without distinction to the examination of the bishop or of the priests established in the place where the question is being litigated.

C. XVI. Concerning the same.

The same to Sergius the Chancellor. If any cleric, whether of lower or higher rank, stands as plaintiff and directs his actions against a lay person, he shall by every means resort to state his case nowhere other than before the judge of the province. But if any layman has determined that a cleric of any

rank is to be sued, let him present before the judgment of the bishops established in that city or territory those actions which he considers himself to possess. That rule which commands the plaintiff always to follow the forum of the one sued makes manifest that this order is demonstrated to be in every respect fitting and consonant with the laws. And the authority of imperial enactments also declares that the forum for clerics who are sued lies in episcopal judgment. Likewise it is read in the Council of Agde, [c. 32]:

C. XVII. Unless the bishop permits it, a cleric ought not to be sued before a secular judge.

Let no one presume to sue a cleric before a secular judge when the bishop does not permit it; but if he has been sued, let him neither answer nor plead, nor dare to present a criminal matter in secular judgment.

C. XVIII. A cleric disobedient to his bishop shall be deposed and handed over to the curia.

Likewise Pope Pius, [letter II]. If any of the priests or remaining clerics has been disobedient to his bishop, or has prepared snares for him, or inflicted insult, calumny, or abuse upon him, and can be convicted, let him immediately be deposed and handed over to the curia, and let him receive what he has unjustly done.

C. XIX. Let imperial authority restrain one who has refused to abandon the congregation he invaded.

Likewise from the Third Council of Carthage, [c. 38]. We request that you deign to give us confidence whereby, when necessity itself compels, we may be free, in accordance with the statutes of the most glorious princes, to approach the governor of the province against that man who, though admonished even to this day, refuses to relinquish the congregation which he had invaded, as had been established, so that one who has refused to acquiesce in the mild admonition of your holiness and to amend what is illicit may immediately be excluded by judicial authority. Bishop Aurelius said: With the form of discipline preserved, he will not be judged to have been assailed if, after being modestly admonished by your charity, he has refused to withdraw, since through his own contempt and contumacy he has caused himself to be summoned by judicial authority. Bishops Honoratus and Urban said: This therefore pleases all.

C. XX. Let those whom the church is unable to correct be corrected by princes.

Likewise Gregory. This is what we requested from you and now request again: that you send Paulinus, the pseudo-bishop of Aquileia, and that Bishop of Milan to the most merciful prince under suitable custody, so that the former, who can in no way be a bishop because he was made contrary to every canonical custom, may no longer destroy others, and the latter, who presumed to ordain him contrary to ancient custom, may be subjected to the vengeance of the canons.

C. XXI. Let clerics who enter conjurations or conspiracies lose their proper rank.

Likewise in the Council of Chalcedon, [c. 18]. The crime of conjurations and conspiracies, which among the Greeks is called a *phratria*, is certainly also altogether prohibited by the public laws. Much more is it fitting to banish its occurrence in the holy church of God. But if any clerics or monks are found entering conjurations or conspiracies, or forming *phratriae* or any factions against their bishops or others, let them by every means fall from their proper rank.

C. XXII. Let conspiring clerics, after losing their proper rank, be confined in prison; let the others be excommunicated.

Likewise Pope Callistus, [letter II to the Bishops of Gaul]. We have heard that the crimes of conspiracy flourish in your regions, and it has been reported to us that congregations conspire against their bishops. The cunning of this crime is abominable not only among Christians but also among pagans, and it is prohibited by external laws. Therefore not only ecclesiastical laws but also secular laws condemn those guilty of this crime, and not only the conspirators but also those consenting to them. Moreover, our predecessors, together with a very great multitude of bishops, commanded that any of them who are placed in priestly honor or are clerics be deprived of the honor which they exercise; but they ordered the others to be deprived of communion and made exiles from the church, and they judged all the men of both orders together to be infamous—not only those committing the deeds, but also those consenting to them.

C. XXIII. Let clerics or monks who enter conjurations be deprived of their proper honor.

Likewise from the Council of Chalcedon, [c. 18]. If any clerics or monks are found entering conjurations or conspiracies, or laying snares for bishops or clerics, let them be cast entirely from their proper rank.

C. XXIV. Concerning the same.

Likewise from the Council of Toledo. If clerics or monks are found entering conspiracies or contriving calumny against bishops or clerics through a conjuration, let them lose their proper rank.

C. XXV. Concerning the same.

Likewise from the Council of Orléans, [III, c. 21]. If any of the clerics—as has most manifestly appeared to have been done recently in many places through pride at the devil's instigation—have gathered themselves into one body by rebellious authority through an intervening conspiracy, or if it has become evident that oaths were given among them or a document was drawn up, their presumption shall escape by no excuses; but when the matter has been disclosed and the synod has convened, let it be avenged upon the presumptuous persons, according to the quality of their persons and orders, by the pontiffs who shall then have assembled together, because just as charity, according to the divine precepts, is to be shown from the heart and not by the drafting of a document or by a conspiracy, so those things which are undertaken against the sacred scriptures are to be repressed by pontifical authority and severity.

C. XXVI. Let cases arising between clerics and laymen be heard by bishops.

Likewise Pope Innocent, [to Victricius of Rouen, letter II, c. 3]. If any cases or contentions have arisen between clerics and laymen, of both higher and also lower rank, it was resolved that judgment be terminated in accordance with the Nicene Synod, with all the bishops of the same province assembled. GRATIAN. Since, therefore, by all these authorities it is forbidden that clerics be produced before a civil judge, and since they are not to be presented to the curia unless they have first been deposed or stripped of office, it is evident that clerics are not to be dragged to secular judgments. PART II. § 1. The response to these things is as follows: clerics are subject to the bishop by reason of their office; by reason of possession of estates they are answerable to the emperor. From the bishop they receive anointing, tithes, and first fruits; but from the emperor they obtain possession of estates. Hence Augustine says on John: "By what law do you defend estates? By divine or human law, etc.?" Seek this at the beginning, where the difference between natural law and the law of enactment is designated. Because, therefore, it was brought about by imperial law that estates may be possessed, it is evident that clerics are answerable to the emperor by reason of possession of estates.

C. XXVII. The church ought not to deny tribute to the emperor. Likewise Ambrose against Auxentius, [in the oration *On Handing Over the Basilicas*].

If the emperor seeks tribute, we do not deny it: let the fields of the church pay tribute. If the emperor desires the fields, he possesses the power to vindicate them. Let him take them, if it pleases him: I do not give them to the emperor, but I do not deny them.

C. XXVIII. Tributes are not to be denied to the powers.

The same, [in the commentaries on Luke c. 5, book IV, penultimate chapter]. It is indeed a great and spiritual lesson by which Christian men are taught that they ought to be subject to higher powers, lest anyone think that the enactment of an earthly king is to be dissolved. For if the Son of God paid the tax, who are you, so great that you think it is not to be paid? [GRATIAN.] Likewise the Apostle: "Let every soul be subject to the higher powers." Likewise the apostle Peter writes generally to all the faithful: "Be subject to your lords, whether to the king as preeminent, or to governors as sent by him for the punishment of evildoers but the praise of the honorable."

C. XXIX. A bishop ought not to take cognizance of secular affairs.

Likewise from the letter of Clement, [I, to James the brother of the Lord]. You indeed ought to live blamelessly and strive with the greatest zeal to cast aside all occupations of this life: do not become a surety, do not become an advocate in lawsuits, nor be found at all entangled in any occupation by occasion of worldly business. For Christ does not wish to ordain you today either as judge or as examiner of secular affairs, lest, suffocated by the present cares of men, you be unable to devote yourself to the word of God. Therefore let laymen who are free for such things furnish one another these works which we have said are less fitting for you, and let no one occupy you away from those pursuits through which salvation is given to men.

C. XXX. In those matters which pertain to the use of common life, let laymen furnish assistance to one another.

Likewise from the same. For just as it is a crime of impiety for you, O Clement, to undertake secular cares while neglecting the pursuits of the word of God, so it is a sin for each of the laity unless they faithfully furnish assistance to one another even in those things which pertain to the use of common life. But let all labor in common to make you free from those things to which you ought not to attend. But if perhaps the laity do not understand this by themselves, they are to be instructed through the deacons, so that they may leave to you the cares of the church alone. GRATIAN. From all these things it is given to be understood that in a civil case a cleric is to be convened before a civil judge. For just as an ecclesiastical judge is the administrator of ecclesiastical laws, so none but a civil judge ought to be the executor of civil laws. For just as he alone possesses the right to interpret the canons who possesses the power to establish them, so he alone ought to be the interpreter of civil laws who imparts their right and authority. But in a criminal case a cleric is to be examined only before a bishop. And this is what was defined above by laws and canons: namely, that in a criminal case no cleric is to be produced before a civil judge, unless perhaps with the consent of his bishop; as when they are found incorrigible, then, after their office has been taken from them, they are to be handed over to the curia. Hence Pope Fabian says, [letter II to the Eastern Bishops]:

C. XXXI. Let one who plots against his bishop be removed from the clergy and handed over to the curia.

We establish that, if any cleric has proved hostile to or a plotter against his bishops, immediately, before judgment has been examined, let him be removed from the clergy and handed over to the curia, which he shall serve for the days of his life, and let him remain infamous without any hope of restoration. GRATIAN. Because, therefore, this man produced a cleric before a civil judge not in a criminal but in a civil case, he is not to be judged a transgressor of the canons, nor is he to be said to have dragged the defendant before a judge who was not his own, because none but a civil judge ought to take cognizance of a civil case. PART III. § 1. On the contrary, those things which were said in defense of the plaintiff indeed appear probable, but lack weight. For by sacred canons and forensic laws a cleric is forbidden to be dragged before a civil judge in both a civil and a criminal case. Hence it is read in the letter of Clement, [I, to James]:

C. XXXII. Let brothers be judged before priests.

If any of the brothers have disputes among themselves, let them not be judged before secular examiners, but let whatever it is be decided before the priests of the church.

C. XXXIII. Let no cleric enter the curia on account of any case.

Likewise Pope Sylvester, [in the epilogue of the Roman Council]. Let no cleric, priest, or deacon enter the curia on account of any case whatsoever, nor presume to plead his case before a civil judge.

C. XXXIV. Let a penitent seek ecclesiastical, not forensic, judgment.

Likewise Pope Leo, [to Rusticus, letter XC, otherwise XCII, c. 9]. It is one thing to demand back just things that are owed, another to despise one's own things from love of perfection. But one seeking pardon for unlawful things ought also to abstain from many lawful things, as the Apostle says: "All things are lawful for me, but not all things are expedient." Hence, if any penitent has a case which

perhaps he ought not to neglect, let him seek ecclesiastical judgment rather than forensic judgment. GRATIAN. He does not say "on account of a criminal case" only, but generally "on account of any case," understanding both civil and criminal. Likewise Emperor Theodosius:

C. XXXV. Let it be permitted to anyone to choose the judgment of the bishop of the sacrosanct see.

Whoever has a lawsuit, whether he is plaintiff at the beginning of the suit or after courses of time have elapsed, whether when the case is being fully pleaded or when sentence has already begun to be pronounced, if he has chosen the judgment of the bishop of the sacrosanct law, immediately, without any doubt, even if the other party objects, let him be directed to the judgment of the bishops together with the declaration of the litigants.

[C. XXXVI.]

The same. Therefore let all cases which are conducted by praetorian or civil law, once terminated by the sentences of bishops, be confirmed by the right of perpetual stability, nor let it thereafter be permitted to reconsider a matter which the sentence of bishops has decided. Let all judges without doubt accept even testimony furnished by one bishop, and let no other person be heard when the testimony of a bishop has been promised by either party. For let that be held confirmed by the authority of truth, and let that be held incorrupt which has been brought forth by a sacrosanct man from the conscience of an unblemished mind. We confirm this by a salutary edict and judge that it is to be observed by perpetual law. GRATIAN. If anyone contends that these things have become obsolete because they are not found inserted in Justinian's Code, let him recognize that they were renewed by Charlemagne, who says, among other things, in his Capitularies, [book VI, c. 281]:

[C. XXXVII.]

"We will and command that all subject to our dominion—Romans as well as Franks, Alemanni, Bavarians, Saxons, Thuringians, Frisians, Gauls, Burgundians, Britons, Lombards, Gascons, Beneventans, Goths, Spaniards, and all others subject to us, by whatever bond of law they appear bound or by whatever customary practice connected—shall all hold by perpetual law this sentence from the sixteenth book of Emperor Theodosius, namely chapter eleven, in response to the inquiries of Duke Ablavius, which we sent in writing to them and to all and, with the counsel of all our faithful, placed among our capitularies to be observed as law, that is: Whoever has a lawsuit, whether he is plaintiff, etc., as above." Likewise Gregory, [book XI, letter 54], in admonishing John the Defender as he went to Spain, says:

C. XXXVIII. A priest ought to be judged only before his bishop.

Concerning the person of a priest this is to be observed: if anyone has a case against him, he ought not to be detained by another, but his bishop ought to be approached, as the Novel constitution makes manifest, which speaks thus concerning the most holy and God-beloved and most reverend bishops, clerics, and monks: "The Emperor Augustus Justinian to Peter, most glorious praetorian prefect, chapter LIII. If anyone has any action against a cleric or monk, or a deaconess, or a nun, or a female ascetic, let him first inform the most holy bishop to whom each of them is subject. But let him adjudicate the case between them. And if indeed both parties do not acquiesce in the things judged, we command that full execution be entrusted through the judge of the place." § 1. But lest it be

objected that this speaks of a cleric, not of a priest, it is to be known that above, in the same constitution, book L, chapter 1, it is read that priests and deacons are also contained under the appellation of clerics. The words of the law are these: "Priests, deacons, readers, and singers, all of whom we call clerics," and the rest.

C. XXXIX. Let a cleric not drag another cleric to public judgments.

Likewise Gregory, [book IX, letter 32], to Romanus, Defender of Sicily. It has reached us that, if anyone has a case against any clerics, you cause those clerics, with their bishops despised, to be presented at your judgment. If this is so, it is established to be exceedingly incongruous. But by this authority we command you not to presume to do this again; rather, if anyone has a case against any cleric, let him approach that cleric's bishop, so that either the bishop himself may take cognizance of it, or judges may at least be appointed by him, or, if perhaps recourse is to be made to arbiters, an executor appointed by him may compel the parties to choose judges. But if any cleric or layman has a case against a bishop, then you ought to intervene, so that either you yourself may take cognizance between them, or at least, upon your admonition, they may choose judges for themselves. For if his own jurisdiction is not preserved for each bishop, what else is done except that through us, through whom that ecclesiastical order ought to have been preserved, it is confounded? And the rest.

C. XL. Clerics are not to be oppressed by lay judges.

The same to Januarius, Bishop of Cagliari, [book III, letter 26]. We have learned from the report of our brother and fellow bishop Felix and of Abbot Cyriacus that priests are oppressed by lay judges on the island of Sardinia and that your ministers despise your fraternity; and while simplicity alone is pursued by you, as far as we see, discipline is neglected.

C. XLI. Priests are to be honored by kings, not judged.

Likewise Gregory to Maurice, [the Emperor, book IV, letter 31]. But let our lord not be quickly angered against priests from his earthly power; rather, from excellent consideration for Him whose servants they are, let him so rule over them that he also renders the reverence owed. For in the divine utterances priests are sometimes called gods and sometimes angels. For concerning one who is to be brought to an oath it is said to Moses: "Bring him to the gods," that is, to the priests. And again it is written: "You shall not disparage the gods," namely, the priests. And the Prophet says: "The lips of the priest guard knowledge, and they seek the law from his mouth, because he is the angel of the Lord of hosts." What wonder is it, therefore, if your Piety deigns to honor those to whom God Himself, granting them honor in His own utterance, also calls either angels or gods? § 1. Ecclesiastical history also testifies that, when accusations against bishops had been offered in writing to the prince Constantine of pious memory, he indeed received the documents of accusation; and, summoning the same bishops who had been accused, he burned in their sight the documents which he had received, saying: "Go, and arrange your cases among yourselves, because it is not fitting that we judge gods." In this sentence he furnished something to himself more from humility than to them from the reverence rendered. For before him there were pagan princes in the commonwealth who, not knowing the true God, worshiped wooden and stone gods, and nevertheless granted the greatest honor to their priests. What wonder is it, therefore, if a Christian emperor honors the priests of the true God, when pagan princes, as we have said, knew how to render honor to their priests, who

served wooden and stone gods? § 2. Therefore we assert this not so much specially as generally for all priests, since we do not yet know what sort each person will be in the terrible judgment of God. For Paul, the distinguished preacher, says: "Do not judge before the time, until the Lord comes," and the rest. For there are many things concerning His judgment which men do not know, because perhaps He reproves the things which you praise, and He will praise the things which you reprove.

C. XLII. With what penalty a cleric who drags another cleric to secular judgments is to be struck.

Likewise from the Council of Milevis. Unaccustomed presumption has opened an approach to unlawful attempts to such an extent that clerics, abandoning their own pontiff, drag clerics to public judgments. We therefore establish that this not be presumed henceforth. If anyone has presumed to do this, when summoned, let him both lose his case and be made a stranger to communion.

C. XLIII. A cleric ought not to be judged before a civil judge.

Likewise from the Third Council of Carthage, [c. 9]. It was resolved that if any bishop, priest, deacon, or cleric, when a crime has been charged against him in the church or a civil case has been raised, should abandon ecclesiastical judgment and wish to be cleared in public judgments, even if sentence has been given in his favor, he shall lose his place. And this in a criminal action. But in a civil action, let him lose what he obtained if he prefers to retain his place, since one who, by thinking ill of the whole church, seeks assistance from secular judgment judges wickedly concerning the fellowship of the church in choosing judges, although the Apostle commands that even the cases of private persons be brought to the church and determined there.

C. XLIV. Let a cleric not be accused except before an ecclesiastical judge.

Likewise from the same. If anyone among those of the various orders serving the church has fallen into an accusation of crime and has refused ecclesiastical judgment, he ought to be put in peril.

C. XLV. Let one who has litigation with a cleric approach that cleric's bishop.

Likewise Constitution LXXIV, c. 1. If anyone has litigation with a cleric, if indeed concerning a pecuniary case, let him first approach the bishop to whose judgment the cleric is subject. But the bishop shall impose a suitable end upon the litigation without expense and without delay. But if the bishop is unwilling to decide the litigation, then let the adjudication of the case reach the civil judges. But where the bishop wishes to decide it, let all things proceed without writing, and let definitive sentence be given by him without writings. § 1. But if litigation has arisen concerning a criminal case, then let the competent persons, once addressed, impose an end upon the case consonant with the laws, yet in such a way that the adjudication of the litigation does not exceed the space of two months, to be reckoned from joinder of issue. [§ 2.] [PALEA. But in criminal cases one ought never to proceed without writing.] A cleric shall not, however, be punished otherwise unless, after being found liable, he has been stripped of the priesthood or the honor of the clericate by his bishop. But if the crime is ecclesiastical, then let examination of the case and punishment proceed according to the canons from his bishop, with other judges possessing no participation in cases of this kind.

C. XLVI. Let a cleric having a dispute against another cleric not pursue secular judgments.

Likewise from the Council of Chalcedon, [c. 9]. If a cleric has a dispute against a cleric, let him not abandon his own bishop and have recourse to secular judgments, but let the dispute first be conducted before his own bishop; or at least, if it is the bishop's own dispute, let the dispute be heard before arbiters chosen by each party. But if anyone acts contrary to this, let him lie under the corrections of the canons. § 1. And if a cleric has a case against his own bishop or another, let him complain before the hearing of the provincial synod. § 2. But if a bishop or cleric has a controversy against the metropolitan bishop of that province, let him proceed to the primates of that diocese, or at least to the see of the royal city of Constantinople, so that their dispute may be terminated there.

[PALEA.

C. XLVII. Likewise from the Council of Agde, c. 32.

Let no one presume to sue a cleric before a secular judge when the bishop does not permit it. But if he has been sued, let him neither answer nor plead, nor dare to present a criminal matter in secular judgment.] GRATIAN. From all these things it is given to be understood that a cleric is not to be produced at public judgments in either a civil or a criminal case, unless perhaps the bishop has refused to decide a civil case or in a criminal case has stripped him of the belt of his honor. § 1. But what was said in the letter of Clement—"God does not wish you to be an examiner of secular affairs"—is to be understood from episcopal anointing. For he is not anointed as bishop so that he may sit as examiner of secular affairs, but so that he may exist as a guardian of souls and distributor of spiritual things. Therefore he is prohibited from being occupied in secular affairs, not from becoming an arbiter for a time. Or "secular judgments" are to be understood not concerning secular things, but as judgments of secular men. Judgments concerning secular things are called secular according to that statement of the Apostle: "Therefore, if you have secular judgments, appoint those who are contemptible in the church." But judgments of secular men are called secular in the letter of Clement, as is given to be understood from what follows, when it is said: "Let laymen who are free for such things furnish one another these works which we have said are less fitting for you." Clerics are therefore prohibited from taking cognizance of the affairs of secular men, not of secular cases. For the affairs of clerics, whether criminal or civil, are to be litigated only before an ecclesiastical judge. Hence Pope Hadrian says, [c. 35]:

C. XLVIII. Let a cleric be heard only in his own forum.

If a cleric or layman has been assailed by a criminal charge or lawsuit, when summoned let him be heard nowhere other than in his own forum.

C. XLIX. Concerning the same.

The same, [in the same place, c. 40]. In a case of clerics let this form be preserved: that a sentence pronounced against them by one who is not their own judge shall by no means bind them. GRATIAN. But a thing placed in litigation ought not at all to be transferred to any person before the lawful outcome of the cognizance. Hence Pope Gelasius to Bishop Quingesius:

C. L. Let a thing placed in litigation not be transferred to any person before the outcome of the cognizance.

Because a thing placed in litigation can in no way be transferred to any person until, through the outcome of a lawful cognizance, it can be recognized by judicial adjudication to whom it is owed more rightfully, let no one be permitted to exact rents from that same thing; rather, with that same thing placed in the same condition in which, as was said, it appears to have been established before, whoever thinks that anything can belong to him shall bring suit in a legal examination, with all prejudgments concerning it removed.

Question II

GRATIAN. That fault is worthy of suspension, as is clearly established by that chapter of the Council of Milevis. For if one who has believed that a cleric should be dragged before a civil judge is to be deprived of communion, much more is one worthy of suspension who did not hesitate to drag to secular judgment one who invoked the judgment of his own bishop.

Question III

GRATIAN. PART I. But let it be supposed that this fault was not worthy of suspension; it is asked whether one who dared to celebrate his office contrary to the prohibition of the bishop is to be deposed. But that the sentence of a bishop, whether it was just or unjust, is to be feared, Gregory testifies, [homily XXVI on the Gospels], saying:

C. I. The sentence of the shepherd is to be feared by the flock.

The sentence of a shepherd, whether it was just or unjust, is to be feared.

C. II. One excommunicated by his own bishop is not to be received by another.

Likewise from the Council of Antioch, [c. 6]. If anyone has been excommunicated by his own bishop, he ought not first to be received by others, unless either he has been received by his own bishop or, after a council has been held, he encounters the bishops and answers, and, if he has satisfied the synod and it has so established, he is received under another sentence. This is also fitting to be observed concerning laymen, priests, deacons, and all who are in the clergy.

C. III. One who communicates with excommunicated persons merits a sentence of excommunication.

Likewise Nicholas to King Lothair, [in the letter whose beginning is "Having Heard"]. Above all, avoid communion with Waldrada, your concubine and long ago repudiated by you; for she has been excommunicated and, until she appears before us, separated from all fellowship of Christians. Therefore care must be taken lest you be struck with the equal edge of the sentence together with her and, bound and obligated through passion for one little woman, be dragged to perpetual destruction. For prelates sin more grievously among the peoples, and by this they themselves are punished more cruelly than the rest, as blessed Gregory says: "Prelates ought to know that, if they ever perpetrate perverse things, they are worthy of as many deaths as the examples of perdition which they transmit

to their subjects. Hence it is necessary that they guard themselves from fault the more cautiously, the more through the depraved things which they do they do not die alone." And below. § 1. Moreover, take care lest at some time, in accordance with the Lord's command, we bring two or three witnesses against you—or rather tell this to the holy church—and, what we do not desire, henceforth you become to all as a heathen and a publican.

C. IV. Concerning the same.

Likewise from the Council of Sardica, c. 17. If a bishop, perhaps irascible—which he ought not to be—is quickly and harshly moved against a priest or deacon and wishes to drive him from the church, provision must be made lest an innocent man be condemned or lose communion. And therefore let the one who has been cast out possess the power to appeal to the neighboring bishops, and let his case be heard and treated more diligently. But let the bishop who justly or unjustly cast him out patiently accept that the matter be examined, so that his sentence may either be approved by several or amended. Nevertheless, before all things are diligently and faithfully examined, let no one presume to associate in communion, before cognizance, the one who had been deprived of communion.

C. V. Concerning the same.

Likewise from the Second Council of Carthage, [c. 8]. If any priest has been corrected by his bishop, he ought certainly to complain before the neighboring bishops, so that his case may be heard by them and through them he may be reconciled to his bishop. But if he has not done this, but, swollen with pride—which God forbid—has determined that he is to be separated from the communion of his bishop and, making a schism separately with certain persons, has offered sacrifice to God, let him be held anathema and nonetheless lose his place. But if he has a just complaint against the bishop, it is to be investigated.

C. VI. Concerning those who, after being condemned by a synod, handle the sacred mysteries.

Likewise from the Council of Antioch, [c. 4]. If any bishop is condemned by a synod, or if a priest or deacon is condemned by his own bishop, and they have dared to handle anything of the sacred ministry—whether the bishop according to the preceding custom, or the priest or deacon—let it in no way be permitted to him, even in another synod, to possess hope of restoration or a place of satisfaction; rather, all those communicating with him ought also to be cast from the church, especially if, after learning that a sentence had been pronounced against the aforesaid persons, they have attempted to communicate with them.

C. VII. Let one who presumes to communicate with excommunicated persons be without hope of reconciliation.

Likewise from the Council of Pope Martin, [c. 37]. If any bishop has been excommunicated in a council, or a priest or deacon by his own bishop, and after excommunication that bishop, priest, or deacon has presumed to make the oblation or to perform the morning or evening sacrifice as though in his office as before, let him not be permitted either to possess hope of reconciliation in another council or to be reconciled thereafter; rather, let all those who communicated with him also be repelled from the church, especially those who knew that he had been cast down. But if he has

persisted in disturbing and stirring up the church through external power, he ought to be expelled from the whole congregation as a seditious person.

C. VIII. Concerning bishops who excommunicate innocent persons or those guilty of the slightest causes.

Likewise from the Council of Agde, [c. 3]. If bishops, after setting aside priestly moderation, have presumed to excommunicate innocent persons or those guilty of the slightest causes, or perhaps have refused to receive those hastening to the grace of baptism, let them be admonished by letters from the neighboring bishops of the same province; and if they refuse to obey, let communion be denied to them by the remaining bishops until the time of the synod, lest perhaps those excommunicated be overtaken by death during a long period through the sin of excommunication.

C. IX. Concerning those who presume to communicate during the time of their excommunication.

Likewise from the African Council. It pleased the whole council that one who has been excommunicated for his own neglect, whether any bishop or cleric, and during the time of his excommunication has presumed to communicate before a hearing, shall be judged to have pronounced a sentence of condemnation against himself.

C. X. Let bishops who communicate with excommunicated persons be deposed.

Likewise Pope Nicholas. Teugald of Trier, primate of the province of Belgica, and Guntarius, Archbishop of Cologne—now before you and the holy synod, presenting, under a disclosure of the proceedings, a writing confirmed on this matter by their own hands concerning how they reconsidered and judged the case of King Lothair and his two women, namely Theberga and Gualdrada, and affirming with their own mouths before many persons present that they had done nothing more or less or otherwise, and publicly confessing with living voice that they had violated the sentence which our most holy brother Thado, Archbishop of Milan, and our other fellow bishops had sought from the apostolic see to be issued against Engiltrude, the wife of Boso, and which we, kindled by divine zeal, had canonically pronounced under the attestation of anathema—in all of which we have found that they transgressed apostolic and canonical enactments in many respects and wickedly violated the norm of equity, we judge to remain altogether alien from every office of the priesthood, defining by the judgment of the Holy Spirit and the authority of blessed Peter through us that they stand stripped of the governance of the episcopate. But to the aforesaid deposed men we grant permission to enter the church, communicate as laymen, and speak concerning their own interests; but we do not grant them the faculty of stirring up disturbances or seeking scandal. But as regards what specially pertains to episcopal ministry, let them possess no permission to handle it, as it is now established that we have decreed together with the holy synod.

C. XI. Clerics and laymen who do not obey bishops are made infamous.

Likewise Clement, [letter III to all his Fellow Bishops]. But if all priests and the remaining clerics, all rulers both of higher and lower order, and the remaining peoples do not obey you bishops, they will be not only infamous but also exiles from the kingdom of God and from the fellowship of the faithful, and strangers to the thresholds of the holy church of God.

C. XII. One who saddens a teacher of truth sins against Christ.

Likewise Peter in the ordination of Clement. Whoever saddens a teacher of truth sins against Christ and exasperates God, the Father of all, on account of which he will also be deprived of life.

C. XIII. Obedience is not to be denied to a bishop through a simulated affection for virtues.

Likewise Ambrose in book II *On Duties*, [c. 24]. If anyone does not obey the bishop, desiring to raise and exalt himself, seeking also to overshadow the merits of the bishop by a simulated pursuit of learning, humility, or mercy, he strays from the truth and acts proudly, since this is the rule of truth: that one do nothing for the sake of commending oneself whereby another may be made lesser, nor, if you possess some good work, should you exercise it for the disfigurement and disparagement of another. § 1. Do not defend a wicked man, and do not judge that holy things are to be entrusted to one unworthy. § 2. Nor again accuse and attack one whose crime you have not detected.

C. XIV. One who does not obey the bishop is torn apart by the mouth of demons.

Likewise Pope Anterus, [to the Bishops of Spain]. Far be it from us to judge anything sinister concerning those who, succeeding to the apostolic rank, confect the body of Christ with their sacred mouth, through whom we are Christians, and who, possessing the keys of the kingdom of heaven, judge before the day of judgment. Indeed, in the old law it is held that whoever did not obey the priests either was placed outside the camp and stoned by the people, or, with his neck subjected to the sword, expiated his contempt with blood. But now the disobedient man is cut off by spiritual punishment, or, cast from the church, is torn apart by the ravenous mouth of demons.

C. XV. We ought not even to speak to those to whom the Pope is an enemy.

Likewise Peter in the ordination of Clement. If this Clement is an enemy to anyone because of his deeds, do not wait for him himself to tell you, etc., as above in the tract concerning those to be ordained, where the obedience of inferiors toward superiors is treated.

C. XVI. One who communicates with excommunicated persons is excommunicated.

Likewise Bishop Fabian, [letter I]. As the apostles established, saying: "One must not communicate with excommunicated persons; and if anyone, knowingly turning aside the rules, has at least spoken or prayed together in a house with an excommunicated person, let him be deprived of communion."

C. XVII. Concerning the same.

Likewise Pope Callistus, [letter II, c. 2]. Let no one receive any persons excommunicated by priests before a just examination of both parties, nor communicate with them in prayer, food, drink, or a kiss, nor say "Hail" to them, because whoever knowingly communicates with excommunicated persons in these or other prohibited things shall, in accordance with the institution of the apostles, himself lie under a like excommunication.

C. XVIII. Concerning the same.

Likewise Isidore, [in the Rule of Monks, c. 18]. It is permitted neither to pray nor to speak with an excommunicated person—except for things which pertain to that same excommunication—nor to eat with him. For if anyone has spoken with him either openly or secretly, he shall immediately contract together with him the common penalty of excommunication.

C. XIX. Concerning the same.

Likewise from the Fourth Council of Carthage, [c. 73]. One who communicates with an excommunicated person, if he is a layman, shall be excommunicated; if a cleric, he shall be deposed.

C. XX. Let the names of excommunicated persons be announced openly and publicly to all their neighbors.

Likewise from a decree of Pope Honorius. Let all bishops take care to make known the names of all excommunicated persons equally to neighboring bishops and to their own parishioners and, after placing them in a prominent place before the doors of the church, to impress them upon all who assemble, so that through diligence in both respects ecclesiastical access may everywhere be closed to excommunicated persons and the ground of excuse taken away from all. PART II. GRATIAN. But this concerns those excommunicated by name. For we undergo the penalty of excommunication in two ways: both when we incur guilt and when we are marked by a sentence. Hence Jerome in the book of Judges, [homily II]:

C. XXI. In two ways someone is handed over to Satan.

Hear, finally, the Apostle speaking concerning him who had sinned: "I have handed," he says, "such a man over to Satan for the destruction of the flesh, so that the spirit may be saved." You see, therefore, that even now God has handed offenders into the hands of enemies not only through His apostles, but sinners are also handed over for the destruction of the flesh through those who preside over the church and possess the power not only of loosing but also of binding, when they are separated from the body of Christ for their offenses. And, as it appears to me, men are even now handed over from the church into the power of the Devil in two ways. In this way, which we stated above: when his offense becomes manifest to the church and he is expelled from the church through the priests, so that, marked by all, he may blush, and after his conversion there may happen to him what follows: "so that the spirit may be saved on the day of our Lord Jesus Christ." But in another way someone is handed over to the Devil when his sin is not manifest to men, but God, who sees in secret, beholding his mind and dispositions serving vices and passions, and that in his heart not He but either avarice, lust, boasting, or other things of this kind are loved, Himself hands such a man over to Satan. How does He hand him over to Satan? He departs from his mind, turns Himself away, withdraws from his evil thoughts and unworthy desires, and leaves the house of his heart empty. GRATIAN. Therefore, when someone has been named by a sentence, we ought not to communicate with him. But when by guilt alone he has secretly contracted the penalty of excommunication, one must not cease from communion with him. Hence in the Gospel the Lord then at last said that the sinner was to be held as a heathen and a publican when he had despised hearing the church. The Apostle too does not say, "If anyone is a brother and a fornicator," but "if anyone is named a brother and a fornicator, etc.," understanding the naming of a sentence. Hence also Urban to Bishop

Vilimund: "Indeed, concerning Richard," and the rest. Seek this below in the causa "A Certain Bishop Fell into Heresy." Hence also Christ in the Gospel said that the tares are to be tolerated until the harvest. Hence also Jerome in the same book of Judges:

C. XXII. The evil cannot be separated entirely from the good.

"Do not withdraw from the Lord even to the present day"—that is, while the world stands. Therefore let him show me how the Jebusite dwells with the sons of Judah in Jerusalem while the world stands, since not even the sons of Judah themselves dwell in Jerusalem. Therefore neither will it be possible for this to be true, that the Jebusites dwell with the Jews in Jerusalem, when not even they themselves dwell in it. But let us understand this spiritually, taking up the parable of the Gospel which says concerning the tares: "Permit both to grow, lest perhaps, wishing to uproot the tares, you uproot the wheat together with them." And below: § 1. Hear, therefore, the scripture saying that the sons of Judah were unable to destroy the Jebusites, but they dwelt with them in Jerusalem even to the present day. Hence I beseech you who are faithful to preserve your life and conduct in such a way that in no respect either you yourselves suffer scandal or cause scandal to others; but let it be your highest pursuit and greatest caution that no polluted person enter this congregation of the saints, that no Jebusite dwell among you. For you see that scripture says that the sons of Judah were unable to cast the Jebusites from Jerusalem. But "Jebusite" is interpreted "a trampling." Suppose, therefore, that we cannot cast out those who trample us; let us at least cast out those whom we can, whose sins are manifest. For where sin is not evident, we can cast no one from the church, lest perhaps in uprooting the tares we uproot the wheat together with them. Nevertheless, I am moved by the statement that they were unable to cast out the Jebusites, that is, those who are interpreted as "a trampling." And therefore let us see who are those who trample in the church. Without doubt they are those concerning whom the Lord said in the Gospels: "Do not give what is holy to dogs, nor your pearls before swine, lest perhaps they trample them under their feet and, turning, rend you." Therefore this is the Jebusite, "a trampling": those who, though unworthy, hear the word of God, and, when they have heard it, neither withdraw as unbelievers nor remain as faithful persons, but, after receiving knowledge of the mysteries and examining the more secret things of our faith, afterward turn and attack us and rend our hearts with their contradictions, trampling the pearls of the Lord's word and staining the ornaments of faith. Therefore concerning these it is said that the sons of Judah were unable to cast the Jebusite from Jerusalem even to the present day.

C. XXIII. Holy things are not to be entrusted to swine and dogs.

The same on the Twelve Prophets. Therefore, when an ecclesiastical man who is prudent and understanding has recognized that many impieties exist in what is called the house of God—and not only many but also powerful ones, which can oppress justice—and that the madness of teachers has advanced to such an extent that they receive a price in judgment and do all things for gifts, avoid the poor at the gates, and despise hearing them, let him be silent at that time, lest he give what is holy to dogs and cast pearls before swine, who turn and trample them; and let him imitate Jeremiah, who says: "I sat alone, because I was filled with bitterness."

C. XXIV. It is permitted to eat with a pagan, but by no means with an excommunicated person.

Likewise John Chrysostom, on the Epistle to the Hebrews. For if you wish to go to the table of pagans, we permit it without any prohibition. § 1. "For if anyone," he says, "is named a brother among you." In this place understand "brother" simply as every faithful person, not only a monk. But what is it that he calls brotherhood except the washing of regeneration, which makes it possible for God to be called Father? § 2. "If anyone," he says, "has been named a brother who is a fornicator, or avaricious, or a drunkard, do not even take food with such a person." But when he treated of pagans, he did not speak thus, but: "If anyone of the unbelievers"—meaning pagans—"invites you, and you wish to go, eat everything which is set before you. If anyone is named a brother who is a drunkard, etc." O how great the integrity! We not only do not flee drunkards, but even go to them, participating with them. GRATIAN. Therefore it appears evidently from the foregoing that we are not compelled to avoid the communion of those who have not been marked by a sentence. But the marking of the sentence itself is also understood in several ways. § 1. For sometimes someone is barred from the thresholds of the church and from communion in the body and blood of Christ, either with conscience as witness, according to that statement of the Apostle: "Let a man prove himself, and thus let him eat of that bread and drink from the cup, because one who eats and drinks unworthily eats and drinks judgment for himself"; likewise that statement of Prosper: "More easily they will appease God for themselves, etc." Seek this below in the causa "Impeded by Sorceries," question 1, concerning penance; or by an ecclesiastical sentence, as penitents are, upon whom at a predetermined time the benefit of reconciliation is bestowed. And the sentence is called excommunication because it prohibits the person marked from communion in the body and blood of Christ, just as Adam also was excommunicated from eating of the tree of life, the Lord saying: "See that he not perhaps take of the tree of life." By this sentence someone is not separated from the fellowship of the faithful. There is also another sentence which is called anathema, by which someone is separated from the fellowship of the faithful, concerning which above: "Do not communicate with excommunicated persons." § 2. Anyone is permitted to notice this distinction from the authority of Pope John: "Engeltrude, the wife of Boso, etc." Seek this above in the causa "A Certain Bishop Cast from His Own See." Likewise from the authority of the same: "If anyone has violated the house of God, etc." Seek this below in the causa "A Certain Priest Weighed Down by Illness." Likewise from the authority of Pope Sylvester: "By the present decree we judge, etc." Seek this above in the causa "Concerning the Infamy of a Certain Bishop." § 3. According to this distinction, therefore, that authority of Innocent is to be understood: "If anyone, at the devil's persuasion, etc.," as below in the causa "A Certain Priest," so that, according to the etymology of the word, one who falls under that edict lies under anathema, that is, separation, because one who has dared to lay impious hands upon a cleric makes himself a stranger to the body and blood of Christ and to entry into the church. He also cannot be absolved by any bishop, that is, reconciled in the manner of penitents, unless he has first taken care to present himself before the apostolic presence. § 4. But that statement of Peter concerning Clement—"If this Clement is an enemy, etc."—is to be understood of those marked by sentence, as is also that statement of Urban: "Those with whom bishops do not communicate, etc.," as below in the same causa. Otherwise, that statement of the Second Council of Vaires would be false: "If only the bishop knows himself to be conscious of another's crime." Likewise also this: "It was resolved that if at any time a bishop, etc." Seek this above in the causa "Two Fornicators and Persons Marked by Infamy."

C. XXV. It is not permitted to communicate with those who communicate with excommunicated persons.

Likewise Gregory to the Clergy and People of Salona. I ask and admonish that no one among you presume, against his own soul, to communicate with any priest who communicates with the above-written Maximus.

C. XXVI. Let no cleric or layman approach the house of an excommunicated person.

Likewise from the First Council of Toledo, [c. 15]. If any layman is suspended from communion, let no cleric or religious person approach his house. Similarly, if a cleric is suspended from communion, let him be avoided by clerics. If anyone is detected speaking or feasting with him, let him also be suspended from communion. But let this pertain to those clerics who belong to his bishop and to all who have been admonished concerning the person suspended from communion, whether any layman or cleric. PART III. GRATIAN. But this is specially the case concerning those who communicate with persons excommunicated by name. Hence Urban below: "Indeed, concerning Richard, etc." Causa: "A Certain Bishop Fell into Heresy." Likewise Pope Nicholas, "Most Excellent King Charles," below near the end of this causa.

C. XXVII. The sentence of a shepherd is to be feared, even if he binds unjustly.

Likewise Urban, [to all Bishops, c. 5]. Do not communicate with those with whom bishops do not communicate, and do not receive those whom they have cast out. For the sentence of a bishop is greatly to be feared, even if he binds unjustly.

C. XXVIII. One who communicates with excommunicated persons contracts the penalty of excommunication.

Likewise from the Eighth Synod. If any brother has spoken with an excommunicated person either openly or secretly, or has been joined to him in communion, let him immediately contract together with him the penalty of excommunication.

C. XXIX. Concerning the same.

Likewise from the Second Council of Carthage, [c. 7]. If those who have deservedly been driven from the church for their crimes are received into communion by any bishop, priest, or cleric, let that person also be held liable for an equal crime with them, since they flee the regular judgment of their own bishop.

C. XXX. Let one who thinks the bishop's sentence unjust have recourse to the synod.

Likewise from the Fourth Council of Carthage, [c. 66]. A cleric who thinks the bishop's severity toward him unjust shall have recourse to the synod.

C. XXXI. Ecclesiastical bonds are not to be despised.

Likewise John Chrysostom, on the Epistle to the Hebrews. Let no one despise ecclesiastical bonds. For it is not man who binds, but Christ, who gave this power and made men lords of so great an

honor.

C. XXXII. One who is excommunicated by the church is handed over to Satan.

Likewise Augustine, *On the Words of the Apostle*, sermon LXXIX. Every Christian, most beloved, who is excommunicated by priests is handed over to Satan. How? Namely, because the devil is outside the church, just as Christ is in the church, and through this one who is removed from ecclesiastical communion is, as it were, handed over to the devil. Hence those whom the Apostle then declares to have been handed over to Satan he shows to have been excommunicated by himself.

[C. XXXIII.] The same on John.

Nothing ought a Christian to fear so much as to be separated from the body of Christ. For if he is separated from the body of Christ, he is not His member. If he is not His member, he is not enlivened by His spirit. "But whoever," says the Apostle, "does not have the spirit of Christ, he is not His." GRATIAN. Likewise Jerome: "Whose sins you shall forgive, etc.," that is, those whom you have barred from the church, unless they have been reconciled through satisfaction, for them also the gate of the heavenly kingdom will be closed.

C. XXXIV. Let neighboring bishops hear those who complain concerning the judgments of their own bishops.

Likewise from the Council of Milevis, [c. 22]. If priests, deacons, or other lower clerics complain concerning the judgments of their own bishops in cases which they have, let neighboring bishops hear them and, having been engaged by them with the consent of their own bishops, determine whatever lies between them. But if they think an appeal is to be made even from them, let them appeal only to African councils or to the primates of their provinces. But those who think an appeal is to be made to places across the sea shall be received in communion by no one within Africa.

C. XXXV. The unjust condemnation of bishops is judged to be void.

Likewise from the Fourth Council of Carthage, [c. 28]. We judge the unjust condemnation of bishops to be void and therefore to be reconsidered by a synod.

C. XXXVI. Let one who wishes to appear in his own case and assert his innocence do this within a year of excommunication.

Likewise from the Fifth Council of Carthage, [c. 12]. It was again established that, whenever clerics have been convicted or have confessed concerning some crime, whether because of those whose modesty is spared, or because of the reproach to the church or the mockery of heretics and gentiles, if perhaps they wish to appear in their own case and assert their innocence, let them do this within a year of excommunication. But if within a year they have despised clearing their case, let no voice of theirs thereafter be heard at all.

C. XXXVII. One who neglects to conduct the case of his excommunication within a year denies himself a hearing.

Likewise Gelasius. Whoever within the space of a year has not concluded his case civilly or publicly before those who excommunicated him shall appear to have closed the approach to a hearing against

himself. But if they have died without communion with an obstinate mind, we, reserving their case to divine judgment in accordance with the sentence of blessed Leo our predecessor, ought not to communicate with them when dead when we did not communicate with them when alive.

[PALEA. C. XXXVIII.

But one who knowingly communicates with an excommunicated person and from now on even prays together in a house, and furnishes him hiding places so that he may not be brought to satisfaction, shall know himself to be deprived of communion in the body and blood of the Lord until he receives penance from the excommunicator.]

C. XXXIX. Let one who, when ordered by a priest, despises leaving the church be received to pardon more slowly.

Likewise from the Council of Lleida, [c. 10]. One who, when ordered by a priest to leave the church for any fault, has despised doing so shall, for the offense of contumacy, be received to pardon more slowly. GRATIAN. But it is asked: if it happens that the bishop dies before the absolution of the condemned man, can the condemned man afterward be absolved? Concerning these things it was established thus in the Council of Épaone, [c. 28]:

C. XL. Let one who remains bound after the death of a bishop be loosed by his successor.

If a bishop is carried off by death before the absolution of a condemned man, his successor will be permitted to absolve him when corrected or penitent. GRATIAN. The response to the foregoing authorities, by which we are commanded to obey an unjust sentence until the examination of both parties, is as follows: Gregory does not say that a sentence unjustly rendered is to be observed, but that it is to be feared. So too Urban. Therefore it is to be feared, that is, it is not to be despised from pride. But the remaining authorities speak concerning excommunicated persons who either, after being summoned to a synod, despised coming; or, not knowing how to meet the cunning devices of their adversaries, received an unjust sentence from the judge; or, by permitting a sinister opinion concerning themselves to arise through neglect of their lives, received a sentence against themselves. For these alone are permitted to be struck with a sentence of excommunication. Hence in the Council of Meaux, [c. 56]:

C. XLI. For what compelling faults someone is to be deprived of communion.

Let none of the bishops deprive anyone of ecclesiastical communion without a certain and manifest cause of sin. But let no one presume to place anyone under anathema without the knowledge of the archbishop or fellow bishops, except for a cause concerning which canonical authority teaches, because anathema is the condemnation of eternal death and ought to be imposed only for a mortal crime and upon those who could not otherwise be corrected.

C. XLII. Let no one be deprived of communion for small and light causes.

Likewise from the Council of Clermont. Let none of the priests suspend from communion any man of right faith for small and light causes, except for those faults for which the ancient Fathers commanded those committing them to be barred from the church.

C. XLIII. Let anyone be deprived of communion for these three crimes.

Likewise from the Council of Tribur. It is certain that someone ought to be excommunicated for these three crimes: when, canonically summoned to the synod, he despises coming; or if, after he has come there, he refuses to obey priestly commands; or if he presumes to depart from the synod before the examination of his case has been completed. PART IV. GRATIAN. The foregoing authorities, I say, speak concerning these and similar persons, not concerning those suspended unjustly. But that an unjust sentence is not to be obeyed is proved by many authorities. The first of these is that of Jerome on Matthew, [book III]:

C. XLIV. The sentence of a shepherd does not establish or make a person guilty or innocent.

Just as a priest does not make a leper clean, so a bishop or priest does not bind those who are innocent or loose the guilty; but, according to his office, when he has heard the varieties of sins, he knows who is to be bound and who loosed. [PALEA.

C. XLV. Concerning the same.

Likewise Augustine on Matthew. It is ridiculous that we say that man is clean who is bound by the bonds of his sins, solely because a bishop is said to possess power of this kind, so that those loosed by him are loosed in heaven and those bound on earth are bound in heaven. Therefore let the one who binds or looses another be blameless.]

C. XLVI. Absolution is not to be sought when an iniquitous sentence is rendered.

Likewise Pope Gelasius to the Eastern Bishops concerning the condemnation of Dioscorus. Let one against whom a sentence has been brought put away his error; but the sentence is void if it is unjust, and he ought to care for it the less, inasmuch as an iniquitous sentence can burden no one before God and His church. Therefore let him not desire to be absolved from that by which he perceives himself in no way bound.

C. XLVII. God neither harms nor permits anyone to be harmed unjustly.

Likewise Augustine, *On the Highest Good*. According to the catholic faith, no one can harm the nature of God, nor can the nature of God unjustly harm anyone, nor does it permit anyone to be harmed unjustly.

"For one who harms," as the Apostle says, "will receive that which he has harmed."

C. XLVIII. Justice breaks unjust bonds.

The same, [sermon 16], *On the Words of the Lord*. You have begun to hold your brother as a publican: you bind him on earth, but see that you bind justly. For justice breaks unjust bonds. "Whomever you loose," He says, "on earth will be loosed in heaven."

C. XLIX. Rashness in judging harms not the one who is judged, but the judge.

The same, *On the Lord's Sermon on the Mount*, [book II, c. 29]. A rash judgment very often harms the one concerning whom judgment is rashly made in no way. But it is necessary that rashness itself harm the one who judges rashly.

C. L. An unjust sentence does not harm a man.

The same to the Clergy of Hippo, [letter CXXXVII]. What harm is it to a man that human ignorance wishes to erase him from that tablet, if an iniquitous conscience does not erase him from the book of the living?

[C. LI.]

The same to Secundinus the Manichaean, [c. 1]. Think of Augustine whatever you please: only let my conscience not accuse me in the eyes of God.

C. LII. Let those whom conscience justifies not fear the curses of others.

Likewise Gregory to Constantius, Bishop of Milan, [book VI, letter 14]. In all adversities which happen in this life, as you know, the severity of almighty God alone is to be weighed, and one must always have recourse to one's own heart, so that no person's tongue may entangle where conscience does not accuse. For one whom conscience defends is free amid accusations, and one cannot be free without accusation if conscience alone, which accuses inwardly, accuses him. Far be it, therefore, from judgment concerning your Holiness that those things which we believe fabricated by the rumors of slanderous men be brought into any measure of suspicion, because we also possess the testimony of sacred utterance that, when perhaps greater evils are spoken, they ought not to be believed unless proved, but, when proved, ought swiftly to be avenged. § 1. I have therefore said these things to show that it is a mark of excessive levity if anyone endeavors to believe grave evils which cannot be proved. Hence your Holiness ought to separate your mind from the rumors and detraction of slanderous men and to think only of those things which belong to the interior life and advance the utility of subjects.

C. LIII. One whom God justifies is despised by man in vain.

Likewise Augustine on Psalm XXXVI, [discourse 3, at the verse “Nor Will He Condemn Him”]. Even if you are condemned for a time by man, even if you recite the proconsul's sentence against Cyprian, the earthly chair is one thing, the heavenly tribunal another. From the inferior he receives a sentence; from the superior, a crown.

[C. LIV.]

The same on Psalm XXXVII, [at the verse “Because I Have Hoped in You”]. Guard your innocence within, where no one oppresses your case. False testimony will prevail against you, but among men. Surely it will not prevail before God, where your case is to be pleaded? When God is judge, there will be no witness other than your conscience. Between the just judge and your conscience, fear nothing except your case.

C. LV. We ought to care for consciences, not the tongues of men.

Likewise Pope Gregory, [to the priest Palladius, book VIII, letter 45]. Amid the words of those praising or disparaging us, one must always have recourse to the mind; and if the good which is said concerning us is not found in it, this ought to generate great sorrow; and again, if the evil which men speak concerning us is not found in it, we ought to leap into great joy. For what if not all praise us and conscience demonstrates us to be free? We have Paul saying: "Our glory is this, the testimony of our conscience." Job too says: "Behold, my witness is in heaven." Therefore, if there is for us a witness in heaven and a witness in the heart, let us permit fools outside to say what they wish. § 1. For what else do detractors do except blow into dust and stir earth into their own eyes, so that the more they blow detraction from there, the more they see nothing of the truth? Nevertheless, even they are to be summoned and calmly admonished, and satisfaction ought to be given to them by every means, knowing what the Truth says concerning the Jews: "Lest perhaps we scandalize them." But if they are unwilling to be satisfied by the truth, you possess consolation which you may behold in the Gospel. For when it had been said to the Lord, "Do you know that, upon hearing this word, the Jews were scandalized?" He answered: "Let them alone; they are blind leaders of the blind." The apostle Paul also admonishes, saying: "If it is possible, insofar as it is from you, having peace with all men." Being about to say, "Let us have peace with all," and perceiving that this is difficult, he first said, "if it is possible." And he added what is possible when he says, "insofar as it is from you," because if we desire to preserve charity in our mind toward those who hate us, although they do not have peace with us, we nevertheless without doubt have peace with them. GRATIAN. This is to be observed among those who are ready to suspect what they do not see, always ready to reprove, never to imitate. But among others conscience is necessary for us, reputation for them. Hence Augustine, [book *On the Good of Widowhood*, c. 22]:

C. LVI. Conscience is necessary for us, reputation for our neighbors.

Neither holy men nor women are to be heard when, after being reproved for some negligence through which it happens that they come under an evil suspicion from which they know their life to be far removed, they say that conscience before God suffices for them, shamelessly and also cruelly despising the estimation of men, since they kill the souls of others: either of those blaspheming the way of God, to whom, according to their suspicion, the life of the saints, which is chaste, is displeasing as though it were shameful; or also of those who imitate, with an excuse, not what they see but what they suppose. Therefore, whoever guards his life from the crimes of outrages and misdeeds benefits himself; but whoever also guards his reputation is merciful toward others. For our life is necessary for us; our reputation, for others.

C. LVII. Before God one who pronounces a sentence discordant with conduct is accursed.

Likewise Jerome on Paul's Epistle to Philemon. If anyone has said that the just man is unjust and the unjust man just, each is abominable before God. Similarly, one who calls a holy man unholy and, again, asserts that an unholy man is holy is abominable before God.

C. LVIII. One who believes a holy person to be unholy, or an unholy person holy, violates Christ.

The same, [in the same place a little above]. If anyone has believed that a man who is not holy is holy and has joined him to the fellowship of God, he violates Christ, whose members we are. And below: § 1. According to the Apostle, all who believe are made the body of Christ. One who errs and slips in the body of Christ, asserting that a member of it is holy when it is not, or is not holy when it is, see to what crime he becomes liable. Isaiah says: "Woe to those who call sweet bitter, and bitter sweet, placing darkness as light and light as darkness." I think holiness is sweet; what is contrary to holiness, bitter.

C. LIX. One who calls the good evil and the evil good will find the penalty of eternal condemnation.

Likewise Isaiah, [c. 5]. Woe to you who call good evil and evil good, placing darkness as light and light as darkness. § 1. Therefore my people were led captive because they had no knowledge, and their nobles perished by hunger, and their multitude dried up by thirst. Therefore hell enlarged its soul and opened its mouth without any limit; and its mighty men, its people, and its lofty and glorious men descended to it; and man will be bowed down, and the man will be humbled, and the eyes of the lofty will be cast down; and the Lord will be exalted in judgment, and the holy God will be sanctified in justice.

C. LX. One who exercises the power of binding or loosing unjustly deprives himself of it.

Likewise Gregory in homily XXVI, [on the Gospels]. One who exercises the power of binding and loosing according to his own wishes and not according to the conduct of his subjects deprives himself of this power.

C. LXI. Concerning the same.

The same, [in the same place a little below]. Those who follow their own hatreds or favor in the cases of their subjects are unable to judge their subjects worthily.

C. LXII. The absolution of the one presiding is not true unless it follows the judgment of the internal judge.

The same, [in the same place a little below]. Then the absolution of the one presiding is true when it follows the judgment of the internal judge. This is well signified by that resurrection of the man dead for four days, which plainly demonstrates that the Lord first raised and enlivened the dead man, saying, "Lazarus, come forth," and afterward he who had been dead, having come forth alive, was loosed by the disciples, as it is written.

C. LXIII. One who abuses a privilege merits being stripped of it.

The same in the Register. One who abuses the power permitted to him altogether merits losing the privilege.

C. LXIV. One against whom a canonical sentence is not rendered ought not to bear a canonical penalty.

The same, [Gregory to the subdeacon Anthony, book II, indiction XI, letter 9]. One in whose condemnation a canonical sentence was not pronounced ought not to sustain a canonical penalty.

GRATIAN. From these things it is given to be understood that an unjust sentence binds no one before God, nor is anyone burdened by an iniquitous sentence before His church, as is held from the chapter of Gelasius. Therefore one must not abstain from the communion of a person against whom an iniquitous sentence is known to have been pronounced, nor must he cease from his office. Why, therefore, do the chapters of the Councils of Carthage and Africa and of other councils prohibit one unjustly condemned from being received into communion before examination of the judgment? Why also was that statute of the Council of Mainz established:

C. LXV. How one condemned by a synod is restored as innocent in a second synod.

A bishop, priest, or deacon unjustly cast from his rank, if he is found innocent in a second synod, cannot be what he was unless he receives the lost insignia of rank before the altar from the hands of the bishops: if he is a bishop, the orarium, staff, and ring; if a priest, the orarium and chasuble; if a deacon, the orarium and alb; if a subdeacon, the paten and chalice. Thus also let the remaining ranks in their restoration receive those things which they had received when they were ordained. PART V. GRATIAN. If, therefore, even those unjustly cast down cannot be restored by bishops unless they receive from their hands what they had lost, how is anyone permitted by his own authority to communicate with persons unjustly bound and for them to celebrate their offices without absolution having been sought, as Gelasius appears to think? To these things it must be answered that a sentence is sometimes unjust from the disposition of the one pronouncing it, but just from its order and cause; sometimes it is just from disposition and cause, but not from order; sometimes it is just from disposition and order, but not from cause. But when it has been unjust from cause, sometimes there is in him no offense at all which is worthy of condemnation; sometimes that concerning which the sentence is rendered is not in him, but he is to be marked for another matter. It is unjust from disposition when someone, with the integrity of the judicial order preserved, pronounces a sentence against an adulterer or any criminal, induced not by love of justice but by the spite of hatred, a price, or favor toward the adversaries. Hence Bede says on the Epistle of James: "For the anger of man does not work the justice of God," because one who pronounces a sentence against someone in anger, although the latter, as regards himself, receives a just sentence, nevertheless the former, who gave sentence against him not from love of justice but from the spite of hatred, does not imitate the justice of God, upon whom disturbance does not fall.

C. LXVI. A sentence of justice is not to be rendered for rewards.

Likewise Gregory. One who judges rightly and expects a reward of recompense perpetrates fraud against God, because by accepting money he sells the justice which he ought to impart freely. Those who judge justly for temporal gain use good things badly.

For it is not the defense of justice but love of reward that provokes such men toward the truth; if the hope of money is taken from them, they immediately withdraw from the confession of justice. The

acceptance of money is a transgression of truth. Hence it is also said concerning the just man: "He who shakes his hands free from every gift will dwell on high."

C. LXVII. In the works of rulers let reason claim everything for itself.

The same to Emperor Maurice. That solicitude of rulers is useful, that caution praiseworthy, in which reason does everything and fury claims nothing for itself. Power is to be restrained under reason, nor is anything to be done before the agitated mind returns to tranquility. For in a time of agitation it thinks everything it has done just.

C. LXVIII. One who pronounces a sentence from anger sins gravely.

Likewise Ambrose, *On Saint Joseph*, [c. 13]. Anger also often brings innocent persons under accusation, because while we are angry beyond what is just and wish to restrain the sins of others, we commit graver ones. Therefore the Apostle says: "Do not avenge yourselves, dearest ones, but give place to anger"; that is, let us avoid it, lest it seize us. Hence the Lord Jesus, sending the disciples to evangelize, sent them without gold, without silver, without money, without a staff, so that He might take away both incentives to strife and instruments of vengeance.

C. LXIX. Reason ought to correct what was promulgated in fury.

Likewise from book XI of the *Ecclesiastical History*. When a sedition arose at Thessalonica and a certain military man had been killed by the onrush of the raging people, Theodosius, inflamed by the atrocity of the sudden report, ordered that the people be invited to the circus games, that soldiers unexpectedly surround them, and that they slaughter indiscriminately with the sword whomever each encountered, giving vengeance not to the crime but to fury. When he was reproved for this by the priests of Italy, he acknowledged his offense and, confessing his fault with tears, undertook public penance in the sight of the whole church and patiently completed the time assigned to him for this without royal pomp. To all these things he also marvelously added this: he established laws for the future that sentences of princes pronounced concerning punishment be delayed by their executors until the thirtieth day, so that a place for mercy or, if the matter required it, for repentance would not perish.

C. LXX. In dictating sentences let rulers be led by no fury.

Likewise Gregory. It must above all be guarded that rulers of the church and those who exercise public judgments are in no way precipitate through being led by levity or fury in dictating sentences. Rather, after the cases have first been diligently examined and the matter which was unknown has come fully to knowledge, let divine and human law then be unfolded, and let definitive sentence be pronounced according to what was established there, with acceptance of persons removed. Hence it is that Moses, after entering the tabernacle, always referred the complaints of the people to the Lord and pronounced judgments according to what the Lord commanded, clearly instructing us to pronounce a sentence of condemnation or justification not from our own heart but from divine command.

C. LXXI. A just judgment cannot be sold.

Likewise Augustine to Macedonius, [letter LIV]. A judge is not permitted to sell a just judgment, although an advocate is permitted to sell just advocacy and a jurisconsult right counsel.

C. LXXII. Concerning the same.

Likewise Isidore, [book III *On the Highest Good*, c. 58]. While the poor man does not have anything to offer, he is not only despised without being heard but is also oppressed contrary to the truth. Justice is quickly violated by gold, and a guilty man fears no fault which he thinks he can redeem with money. GRATIAN. Therefore this sentence, which is rendered against someone not from love of justice but from any other cause, is to be obeyed humbly. Hence in the Council of Nicaea, [c. 5]:

C. LXXIII. Let those who incur the displeasure of their bishops not be received by others.

Let this sentence also be preserved: that those who are excommunicated by some are not received into communion by others. Let inquiry indeed be made lest perhaps any persons have been suspended from communion because of some indignation of mind, contention, or any similar agitation of their bishop's stomach, so that then at last those who have deservedly incurred the displeasure of their bishops for their own faults may worthily be held likewise excommunicated even by the others, until it has appeared good to their own bishop to render a more humane sentence concerning them. GRATIAN. Likewise, a sentence is unjust from order when anyone is condemned for his fault without the judicial order having been preserved.

Hence Gregory writes to Constantius, Bishop of Milan, [book VIII, letter 30]:

C. LXXIV. A doubtful matter is not to be determined by a certain sentence.

It is sufficiently grave and unseemly that a certain sentence be given in a doubtful matter.

C. LXXV. Things which are not demonstrated by certain proofs are not to be believed.

Likewise Augustine in the book *On Penance*, [c. 3]. Although certain things may be true, nevertheless they are not to be believed by a judge unless they are demonstrated by certain proofs.

C. LXXVI. Let persons not be judged before they are examined.

Likewise Pope Damasus, [letter VI]. It is not permitted to examine the cases of those who are accused before they have been canonically summoned to the synod and come, and one present truly recognizes and understands from another present the things objected against him. This is also said through the wisdom of Solomon: “Before you investigate, do not reprove. First understand, and then rebuke. Before you hear, do not reprove.” And although the reproof of the opposing matters may be most manifest, nevertheless the order ought to be preserved by those who have been appointed to examine them.

C. LXXVII. Both one who brings forth falsehood concerning another and one who believes accusations are guilty.

Likewise from the Eighth Synod. Not only is the one guilty who brings forth falsehood concerning another, but also he who quickly lends an ear to accusations. PART VI. GRATIAN. Therefore, when a sentence is unjust from order, even then one must not withdraw from it, because even before the sentence was given against him, according to the character of his guilt he was held bound before God. It sometimes happens that an adulterer receives a sentence for sacrilege, the guilt of which he does not possess in his conscience. Although this sentence is unjust because the crime concerning which it was rendered is not in him, nevertheless it was justly received by him, who through the guilt of adultery had already long been excommunicated before God. And in this case that authority of Gregory is to be understood: "The sentence of a shepherd, etc." § 1. He calls a sentence just when the crime concerning which it is rendered underlies it; unjust, when that crime does not underlie it, which nevertheless is to be feared or observed because the man was already long ago to be condemned for another matter. Hence, after Gregory had first said, "Whether the shepherd binds justly or unjustly, nevertheless the sentence of the shepherd is to be feared by the flock," he continued and added: "Lest the one who is subject and perhaps is bound unjustly merit the very sentence of his binding from another fault. Therefore let the shepherd fear either to absolve or to bind without discretion. But let the one who is under the shepherd's hand fear to be bound, even unjustly, and not rashly reprove the judgment of his shepherd, lest, even if he was bound unjustly, from the very fault of the pride of his swollen reproof that which was not a fault become one." § 2. Sometimes no crime underlies it, and nevertheless either through the hatred of the judge or the faction of enemies he receives against himself a sentence of condemnation opposed to him. Hence Gregory says:

C. LXXVIII. In how many ways human judgment is perverted.

Human judgment is perverted in four ways: by fear, when through dread of someone's power we fear to speak the truth; by cupidity, when we corrupt someone's mind with a reward; by hatred, when we contrive against any adversary; by love, when we strive to favor a friend or relative. GRATIAN. But how grave it is to pervert judgment by hatred, friendship, a gift, fear, or any means, Augustine testifies, saying:

C. LXXIX. Concerning those who pervert judgment in any way.

Whoever is led in judging either by consanguinity, friendship, hostile hatred, or enmities perverts the judgment of Christ, who is justice, and turns its fruit into bitterness.

C. LXXX. Concerning those who conceal the truth from fear of power.

The same to Casulanus. Whoever conceals the truth through fear of any power provokes the wrath of God upon himself, because he fears man more than God. And a little later: § 1. Each is guilty: both the one who conceals the truth and the one who speaks a lie, because the former does not wish to benefit and the latter desires to harm.

C. LXXXI. Concerning the same. Likewise.

Let none of the skilled or prudent think that there is less danger in lying with words of the tongue than in shedding blood with the hands. But it is better to suffer punishment for the truth than a benefit for flattery.

[C. LXXXII.]

Likewise Pelagius to Archbishop Benignus. Each person must take care lest he persecute, judge, and punish anyone unjustly, lest he persecute, judge, and punish Jesus. GRATIAN. One who denies the truth for money, or speaks false testimony against someone, is also proved here to deny or sell God. Hence Bede on Mark:

C. LXXXIII. Those who speak false testimony and deny the truth for money become participants in the crime of Judas.

Judas went to the chief priests, and they agreed to give him money. Many today abhor as monstrous and nefarious the crime of Judas because he sold his Lord and teacher and God for money, yet they do not guard against it. For when they speak false testimony against anyone for gifts, assuredly, because they deny the truth for money, they sell God for money. For He Himself said: "I am the truth." When they defile the fellowship of brotherhood with any plague of discord, they betray God, because God is charity. Therefore those who despise the commands of charity and truth betray God, who is charity and truth, especially when they sin not from weakness or ignorance, but, in the likeness of Judas, seek an opportunity whereby, with witnesses absent, they may change truth into falsehood and virtue into accusation.

C. LXXXIV. One who makes himself an associate of perverse persons denies Christ.

Likewise Jerome, [on the Epistle to Titus, c. I, at the end]. Certain persons think that God is denied only in this: if someone seized by the gentiles in persecution has refused to confess that he is a Christian. Behold, the Apostle asserts that God is denied by all deeds which are perverse. Christ is wisdom, justice, truth, holiness, fortitude. Wisdom is denied through foolishness, justice through iniquity, truth through falsehood, holiness through shamefulness, fortitude through weakness of mind. As often as we are conquered by vices and sins, so often do we deny God; and conversely, as often as we do something good, we confess God. Nor is it to be judged that on the day of judgment only those who denied Christ in martyrdom will be denied by the Son of God, but also all those by whose work, speech, or thought Christ is denied—one denies Him, or, having confessed Him, confesses Him. I think it is concerning this confession that He commanded the disciples, saying: "You will be witnesses to me in Jerusalem and in all Judea and Samaria and even to the farthest part of the earth."

C. LXXXV. One who denies that he is a Christian is convicted of denying Christ.

Likewise Augustine, [tractate CXIII on John c. 18]. Not only does one deny Christ who says that He is not the Christ, but also one who, although he is, denies that he is a Christian. For the Lord did not say to Peter, "You will deny that you are my disciple." Therefore he denied Him when he denied that

he was His disciple. But what else did he deny himself to be in this manner than a Christian? The same, [tractate LXVI]. § 1. By fearing the death of your flesh, you will give death to your soul.

For as great life as it is to confess Christ, so great a death it is to deny Christ. Did the apostle Peter—as those who strive to excuse him through perverse favor say—not deny Christ because, when questioned by the maidservant, he answered that he did not know the man?

C. LXXXVI. Not only one who speaks falsehood in place of truth betrays the truth, but also one who does not freely preach the truth.

Likewise John Chrysostom, [that is, the author of the *Incomplete Work on Matthew*, homily 25]. "Do not fear those who kill the body," lest perhaps through fear of death you do not freely say what you have heard, nor confidently preach to all what you have heard alone in the ear. Therefore, just as it is shown from these words, not only is he a betrayer of the truth who, transgressing the truth, openly speaks falsehood in place of truth; but one who does not freely pronounce the truth which ought to be freely pronounced, or does not freely defend the truth which it is fitting to defend freely, is also a betrayer of the truth. For just as a priest is a debtor to preach freely the truth which he has heard from God, so a layman is a debtor confidently to defend the truth which he has heard from priests and which has indeed been proved in the scriptures. But if he has not done this, he has betrayed the truth. "For with the heart one believes unto justice, but with the mouth confession is made unto salvation." GRATIAN. This sentence harms the judge rather than the one against whom it is rendered. Hence Augustine says:

C. LXXXVII. One who unjustly anathematizes another harms himself, not the other.

I would plainly not say this rashly: that if any of the faithful has been anathematized unjustly, it will harm the one who does it rather than the one who suffers this injury. For the Holy Spirit dwelling in the saints, through whom each person is bound or loosed, inflicts an undeserved penalty upon no one. For through Him charity is poured into our hearts, and it does not act perversely. The peace of the church forgives sins and retains the sins of those alien from the church's peace, not according to the judgment of men but according to the judgment of God. The rock retains, the rock forgives; the dove retains, the dove forgives. [GRATIAN.] Likewise Solomon: "Just as a bird flying uncertainly and a sparrow going anywhere, so a curse pronounced in vain comes upon the one who sent it."

C. LXXXVIII. One whose life does not accord with his office, though himself bound, looses others.

Likewise Gregory in homily XXVI. It very often happens that one holds the place of a judge whose life accords very little with the place, and it often happens that he either condemns the undeserving or, himself bound, looses others; frequently in loosing and binding subjects he follows the movement of his own will and not the merits of the cases. Hence it happens that he deprives himself of the power of binding and loosing, etc. And below: § 1. It often happens that a shepherd is moved toward any neighbor by hatred or favor. But to judge subjects worthily, etc. And below: Hence it is rightly said through the Prophet: "They were putting to death souls which do not die, and making alive souls which do not live." For one puts to death a person who is not dying when he condemns a just man, and strives to make one live who will not live when he attempts to release a guilty man from punishment. § 2. Therefore the cases are to be weighed, and then the power of binding and loosing is

to be exercised. One must see what fault preceded and what penance followed the fault, so that the sentence of the shepherd may absolve those whom almighty God visits through the grace of compunction. For then the absolution is true, etc. And below: § 3. From this consideration one must recognize that through pastoral authority we ought to loose those whom we know our Author makes alive through awakening grace. And below: § 4. Therefore let the dead man come forth, that is, let the sinner confess his fault. But the disciples loose him when he comes forth, because the shepherds of the church ought to remove the penalty which he merited from one who did not blush to confess what he did. § 5. We have said these things briefly concerning the order of loosing, so that under great moderation the shepherds of the church ought either to loose or to bind.

C. LXXXIX. A sentence unjustly pronounced lacks force.

Likewise Pope Callistus, [letter I to Bishop Benedict]. Let an unjust judgment and an unjust determination, arranged or enacted by judges through royal fear and command, or that of any bishop or powerful man, not be valid. § 1. For a religious man it ought to be too little not to exercise or increase the enmities of others by speaking evilly, unless he also endeavors to extinguish them by speaking well. § 2. A humble confession concerning evil deeds is better than proud glorying concerning good ones.

C. XC. One who is unjustly cursed merits a reward.

Likewise Augustine on Psalm CII, [at the verse "The Lord Who Works Mercies"]. One who is just and is unjustly cursed receives a reward. GRATIAN. Although, as was said, he is not held bound before God, he nevertheless ought to obey the sentence, lest one who was previously held absolved by the purity of his conscience be bound through pride. PART VII. § 1. Likewise, there is the case in which a sentence is rendered contrary to equity, as when subjects cannot be compelled to evil, knowing that obedience is not to be preserved toward prelates in unlawful things.

Hence Pope Eutychian says:

C. XCI. A bishop who commands Mass to be sung for heretics is not to be obeyed.

If any bishop or abbot commands his priest or monk to sing Masses for heretics, it is not permitted. For it is not expedient to obey them.

C. XCII. It is often expedient not to obey commands.

Likewise Augustine. It is not always evil not to obey a command; for when a lord commands those things which are contrary to God, then he is not to be obeyed.

C. XCIII. Concerning the same.

Likewise Jerome on the Epistle to the Ephesians. If a master commands those things which are not contrary to the sacred scriptures, let the servant be subject to the master. But if he commands contrary things, let the spirit obey rather than the lord of the body. And below, [c. 3]: § 1. If what the emperor commands is good, carry out the will of the one commanding; if evil, answer: "One ought to obey God rather than men." The same applies to servants under masters, wives under husbands, and

children under fathers: that they ought to be subject to masters, husbands, and parents only in those things which are not contrary to the commands of God.

C. XCIV. Those who command anything contrary to God are not to be heard.

Likewise Ambrose. Although Emperor Julian was an apostate, he nevertheless had Christian soldiers under him. When he said to them, "Bring forth the battle line for the defense of the commonwealth," he was obeyed. But when he said to them, "Bring forth arms against Christians," then they recognized the Emperor of heaven.

C. XCV. One who is proved to fear God does not command anything unjust.

Likewise Pope Fabian, [letter II to all Bishops]. One who fears almighty God in no way consents to do anything contrary to the Gospel, the apostles, the prophets, or the institutions of the holy Fathers.

C. XCVI. Both one who sins and one who consents to the sinner are condemned.

Likewise Pope Nicholas to King Lothair. You so consented to the impulses of your body and, with the reins of pleasures loosened, cast yourself into the pit of misery and the mire of forbidden filth, that you who had been placed for the governance of peoples were made the ruin of many. The lawful fall of Teugald and Guntarius, formerly bishops, proves this: because they instructed you very incompetently—indeed, rather, because they strove to conceal your transgression with their arguments and to bury equity under a certain appearance of justice by means of certain embellished and elaborate inventions—they were deposed by our apostolic authority and regularly separated from all governance of the episcopate.

C. XCVII. Concerning the same.

Likewise Augustine, [sermon VI *On the Words of the Lord*]. One who resists power resists the ordinance of God. But what if it commands that which you ought not to do? Here certainly despise the power. Attend to the very ranks of human laws. If a curator commands something, is it not to be done? Yet if he commands contrary to the proconsul, you certainly do not despise the power, but choose to serve the greater. Nor ought the lesser be angry on this account if the greater is preeminent. Again, if the proconsul himself commands one thing and the emperor another, or if the emperor commands one thing and God another, what do you judge? God is the greater power. Pardon me, O emperor: you threaten prison; He, hell. Here now your faith is to be taken up by you as a shield, by which you may extinguish all the fiery darts of the enemy.

[C. XCVIII.]

The same to the Donatists, [letter CLXVI]. If emperors were in error—which God forbid—they would enact laws for their error against the truth, through which the just would both be proved and crowned by not doing what they commanded, because God prohibits it. Thus Nebuchadnezzar commanded that a golden statue be adored, and those who refused to do it pleased God, who prohibits such things. But when emperors hold the truth, they command for it against error. Whoever despises this acquires judgment for himself. For he pays penalties among men and will not possess a forehead before God, because he refused to do what Truth itself commanded him through

the heart of the king. Thus Nebuchadnezzar himself, moved and changed after the miracles of the deliverance of the three boys, issued an edict for the truth against error: that whoever blasphemed the God of Shadrach, Meshach, and Abednego should go to destruction and their house to dispersion. And do you not wish Christian emperors to command something like this against you, when they know that Christ is breathed out by you from those whom you rebaptize? The same in the Psalms: § 1. Julian arose as an unbelieving emperor. Did he not arise as an apostate, unjust, an idolater? Christian soldiers served the unbelieving emperor. When it came to the cause of Christ, they recognized no one except Him who was in heaven. When he wished them to worship idols and offer incense, they placed God before him. But when he said, "Bring forth the battle line; go against that nation," they immediately obeyed and distinguished the eternal God from the temporal lord.

C. XCIX. Through obedience it is permitted to abandon a good, but never to do evil.

Likewise Gregory, [book XXXV on Job, c. 12]. What wonder is it, therefore, if sinful man subjects himself to obedience in the brevity of the present life, when the mediator of God and men does not abandon it even when He rewards the obedient? Nevertheless, it is to be known that evil is never to be done through obedience, but sometimes a good which is being done ought to be discontinued through obedience. For the tree in paradise which God forbade man to touch was not evil; but so that well-created man might grow better through the merit of obedience, it was fitting that he be prohibited even from a good, so that what he did would be a virtue the more truly, the more humbly, by ceasing even from a good, he showed himself subject to his Author.

C. C. One who consents to sinners is accursed before God.

Likewise Isidore. One who consents to sinners and defends another who offends will be accursed before God and men and will be corrected with the severest rebuke. Hence also a certain most holy Father says: "If anyone defends a sinner, let him be restrained more harshly than the one who sinned." Hence another Father also says: "If anyone consents to the error of another, let him know that he is to be judged guilty in a like manner with him."

C. CI. That which is commanded contrary to God is not to be obeyed.

Likewise Isidore. If one who presides has done, or has commanded anyone to do, what is prohibited by the Lord, or has passed over or commanded to be passed over what is commanded, the sentence of the holy apostle Paul is to be brought against him, saying: "Even if we or an angel from heaven has evangelized to you other than what we evangelized to you, let him be anathema." The same: § 1. If anyone prohibits us from what is commanded by the Lord, or again commands to be done what the Lord prohibits from being done, let him be execrable to all who love God. The same: § 2. If one who presides either says or commands anything beyond the will of God or beyond what is manifestly commanded in the holy scriptures, let him be held as a false witness of God or as sacrilegious. GRATIAN. Therefore, when subjects are excommunicated because they cannot be compelled to evil, then the sentence is not to be obeyed, because according to that statement of Gelasius, "An iniquitous sentence burdens no one either before God or before His church." PART VIII. § 1. But the command above that those communicating with excommunicated persons be cast from the church is not to be understood concerning those communicating in just any manner. Hence Pope Nicholas to Hincmar, Archbishop of Reims:

C. CII. Concerning those who communicate with excommunicated persons.

The most excellent King Charles consulted our apostolate as to what is to be done concerning those who communicate with those who communicate with the woman Engiltrude, so often condemned, since it is established that she is bound by an equal bond of anathema together with those communicating with and favoring her. Therefore we now enjoin your Beatitude that, relying upon our authority concerning this, you endeavor to take care concerning them. And because your Holiness, divinely taught, knows well that one thing is committed from necessity, another from ignorance, and another deliberately, and that this last is to be punished more strictly than the first two, therefore let it keep skillful watch and judge the circumstances of individuals with cautious severity, so that those who offend from necessity or ignorance may be absolved by you through our authority—provided, nevertheless, that their ignorance or necessity was true and not simulated and did not proceed from will, because, as you well know, there are very many who indeed can but do not wish to know right things. Hence the Psalmist says concerning persons of this kind: "He did not wish," he says, "to understand, that he might act well." But those who are bound by their own deliberate action and through contempt set aside our prohibitions, we wish by no means to be absolved by you unless worthy satisfaction precedes.

C. CIII. Concerning those who communicate with excommunicated persons without fault.

Likewise Gregory VII, [book V of the Register, in the Council held at Rome]. Because we perceive that many, as our sins demand, perish daily on account of excommunication—some conquered by ignorance, some by excessive simplicity, some by fear, and some also by necessity—moved by mercy, we temper the sentence of anathema for a time, insofar as we can. Therefore by apostolic authority we withdraw from the bond of anathema the following: wives, sons, male and female servants or bondservants, as well as peasants and servants, and also all others who are not courtiers to such an extent that crimes are perpetrated by their counsel; those who unknowingly communicate with excommunicated persons; and those who communicate with those who communicate with excommunicated persons. But whoever, whether an orator, pilgrim, or traveler, comes into the land of excommunicated persons where he cannot buy or does not have the means to buy, we grant permission to receive from excommunicated persons. And if anyone wishes to give something to excommunicated persons not for the sustenance of pride but for the sake of humanity, we do not prohibit it.

C. CIV. Concerning Boniface, who swore that he would not communicate with excommunicated persons and pseudo-bishops.

Likewise Boniface the Martyr to Pope Zachary, [in the letter which begins "Of Paternal"]. Gregory of venerable memory, the predecessor of your predecessor, when he ordained me, unworthy as I am, and sent me to preach the word of God to the German peoples, bound me by an oath to become a supporter and helper in word, deed, and consent to canonical and just bishops and priests. With divine grace I endeavored to fulfill this; but as for false priests, hypocrites, and seducers of the peoples, I was either to correct them to the way of salvation or to avoid them and abstain from their communion. I preserved this in part, and in part I was unable to guard and fulfill it; but I fulfilled the oath spiritually, because my soul did not enter into their consent and counsel, though bodily I could not altogether abstain from them. For when, under the compulsion of the churches' necessity, I had

come to the prince of the Franks, I did not find there such men as I wished, but nevertheless I did not communicate with them in the holy communion of Christ's body.

C. CV. One who does not consent to excommunicated persons in his mind does not communicate with them.

Likewise Pope Zachary to Boniface the Martyr, [in the letter whose beginning is "Blessed Be God"]. Our predecessor Gregory of blessed memory, ruler of this apostolic see, when he sent your fraternity to preach the word of the Gospel in the regions of Germany and among those pagan peoples, wished it to be fortified beforehand by a word of promise, so that you would further confirm and communicate with whatever orthodox bishops, priests, or others you could find perfect in the word of exhortation—which was done; but if you found any seducing bishops or pseudo-priests straying from the right path of faith, you were to have no communion with them. You have confessed that, with God assisting you, you have preserved this spiritually even to the present; or, if you were altogether unable to abstain from them bodily on account of the princely and human favor of the Frankish people when you approached them, under the compulsion of the necessity of God's churches, your soul nevertheless was not defiled in their counsel and consent of communion. Therefore, because you associated with them without consenting to their iniquity, there is no detriment to you before God. PART IX. GRATIAN. But the form and manner of excommunication and of reconciliation is this:

C. CVI. The manner and form of excommunication.

Twelve priests ought to stand around the bishop and hold burning lamps in their hands, which at the conclusion of the anathema or excommunication they ought to cast upon the ground and trample underfoot. Then let a letter be sent through the parishes containing the names of the excommunicated persons and the cause of excommunication.

C. CVII. Concerning the same.

Likewise from the Council of Orange. Following the canonical institutions and examples of the holy Fathers, by the authority of God and the judgment of the Holy Spirit we remove N., violators of the churches of God, from the bosom of holy mother church and from the fellowship of all Christianity until they come to their senses and make satisfaction to the church of God.

C. CVIII. The manner of reconciling excommunicated persons.

Likewise from the same. When someone who has been excommunicated or anathematized, led by penance, seeks pardon and promises amendment, the bishop who excommunicated him ought to come before the doors of the church, and twelve priests with him, who ought to stand around him on this side and that. And if the man, prostrate upon the ground, seeks pardon and pledges caution for the future, then let the bishop, taking his right hand, lead him into the church, restore him to Christian communion, and chant the seven penitential psalms with these prayers: Lord, have mercy. Our Father. Save your servant. Prayer: Grant, we beseech You, O Lord, to this Your servant the worthy fruit of penance, so that, by obtaining pardon for the things committed, he may be restored guiltless to Your holy church, from whose integrity he had strayed by sinning. Through the Lord.

PART X. GRATIAN. But what penance is to be imposed upon priests who, while excommunicated, presume to handle the sacred ministry, John VIII determines when writing to the Clergy and Order of Salona, saying:

C. CIX. What the penance is for priests who, while excommunicated, presume to exercise the sacred ministry.

Concerning those priests who, after being excommunicated in the time of our most holy predecessor, the lord Pope Nicholas, presumed to handle the sacred ministry: they brought upon themselves a sentence of condemnation, as the canons establish. Nevertheless, because apostolic compassion is accustomed to furnish pardon to those corrected, from the multitude of mercy we show them this indulgence: that, fattened by holy communion, for three continuous years they endeavor to fast entirely from wine and meat on every Monday and Friday throughout the week and by no means commit further things to be lamented. GRATIAN. But those who communicate with excommunicated persons shall receive a measure of penance according to the measure of the sin. Hence Urban II to Genebald, Bishop of Constance:

C. CX. Let those who communicate with excommunicated persons be punished according to the measure of the sin.

It is established that provision was made by the sacred canons that whoever communicates with excommunicated persons shall be excommunicated. Nevertheless, we determine the measures of that penance and absolution with this moderation: that whoever has contaminated himself by their feasting, prayer, greeting, or kiss, whether through ignorance, fear, or the necessity of some very great and especially necessary business, shall obtain participation in our fellowship with the remedy of a lesser penance. But those who have fallen into it either voluntarily or negligently we wish to be received under such coercion of discipline that fear may be instilled in the others.

Causa XII

GRATIAN. Certain clerics wish to relinquish their own property; they make testaments concerning their own property and that of the church; they bestow certain things from the property of the church. (Qu. I.) First it is now asked whether clerics are permitted to possess property of their own. (Qu. II.) Second, whether the property of the church which was given by them can possess any validity for those who received it. (Qu. III.) Third, if before the time of their ordination they appeared to possess nothing and after ordination are known to have acquired certain things, whether they can leave those things to whomever they wish or not. (Qu. IV.) Fourth, if they are known to have acquired certain things from their own property and that of the church, whether by right they accrue to both in common or separately to the church or the priest. (Qu. V.) Fifth, whether they are permitted to make testaments.

Question I

GRATIAN. PART I. Clerics are commanded by many authorities to possess nothing. For the Council of Toledo says, [IV, c. 23]:

C. I. Let boys and adolescents remaining in one enclosure be assigned to a most approved elder.

Every age from adolescence is inclined toward evil. Nothing is more uncertain than the life of adolescents. On this account it was necessary to establish that, if there are any boys or adolescents in the clergy, all shall dwell together in one enclosure of the atrium, so that they may pass the years of their unstable age not in luxury but in ecclesiastical disciplines, assigned to a most approved elder whom they may have both as master of learning and witness of life. § 1. But if any of these are wards, let them be fostered by priestly guardianship, so that both their life may be untouched by crimes and their property by the injury of the impious. But those who resist these commands shall be assigned to monasteries, so that wandering and proud souls may be constrained by a stricter rule.

C. II. A common life is to be preserved by all clerics.

Likewise Clement in letter IV. Bishop Clement to his most beloved brothers and fellow disciples dwelling at Jerusalem with the most dear brother James and fellow bishop. A common life is necessary for all, brothers, and especially for those who desire to serve God blamelessly and wish to imitate the life of the apostles and their disciples. § 1. For the common use of all things which are in this world ought to have belonged to all men. But through iniquity one said that this was his and another that, and thus division was made among mortals. § 2. Finally, a certain most wise man among the Greeks, knowing that these things are so, says that all things ought to be common among friends. But among "all things" are without doubt even spouses. "And just as the air cannot be divided," he says, "nor the splendor of the sun, so neither ought the remaining things which were given in common for all to possess be divided, but they ought to be possessed in common." Hence also the Lord speaks through the Prophet, saying: "Behold how good and how pleasant," and the rest. § 3. For with the practice of this custom retained, the apostles and their disciples also, as was said before, led a common life together with us and you. For as you well know, the heart of their multitude was one and the soul one, and none among them or us said that anything from what he possessed was his own, but all things were common to them and us, and no one among us was needy. § 4. But all who possessed houses or fields sold them and offered their prices and the remaining things which they possessed, placing them before the feet of the apostles—as certain persons among you recognized and saw together with us—and they distributed to each person according as each had need. § 5. But Ananias, an austere man, and his wife Sapphira, because they lied to the apostles concerning the price of their fields which they had sold, were both, while we were present, carried out dead from the sight of the apostles in the sight of all standing around because of their sin and the falsehood which they committed. Therefore we command you to guard against these things and order you to obey the teachings and examples of the apostles, because those who set aside their commands become not only guilty but also exiles. These things are not only to be guarded against by you, but are also to be preached to all. § 6. Hence, giving counsel, we exhort your prudence not to withdraw from the apostolic rules, but, leading a common life and rightly understanding the sacred scriptures, to endeavor to fulfill those things which you know well.

C. III. Let cloisters for clerics be established beside the church.

Likewise Pope Eugenius II and Leo IX. For it is a necessary thing that cloisters be established beside the church in which clerics may devote themselves to ecclesiastical disciplines. Therefore let there be

one refectory and dormitory for all, and the other workshops necessary for the uses of clerics. But after the bishop let ministers be chosen over them whose life and learning may adorn rather than dishonor them. GRATIAN. Nor shall other buildings be placed in the atrium of the church except those of clerics. Hence Pope Nicholas:

C. IV. Let no buildings except those of clerics be placed in the atrium of a church.

Let no buildings be placed in the atrium of a church except only those of clerics.

C. V. Let a cleric possess nothing secular.

Likewise Jerome to Nepotian. Let a cleric who serves the church of Christ first interpret his own designation and, after the definition of the name has been stated, strive to be what he is called. For if *klēros* in Greek is called "lot" in Latin, clerics are therefore so called because they are of the Lord's lot, or because the Lord Himself is the lot, that is, the portion, of clerics. And because either he himself is the Lord's portion or has the Lord as his portion, he ought to show himself such that he possesses the Lord and is himself possessed by the Lord. One who possesses the Lord and says with the Prophet, "The Lord is my portion," can possess nothing outside the Lord. But if he possesses anything else besides the Lord, the Lord will not be his portion; for example, if gold, silver, possessions, or varied furnishings, the Lord does not deign to become his portion with these portions. But if I am the Lord's portion and the cord of His inheritance, I do not receive portions among the other tribes, but live as a Levite and priest from tithes, and, serving the altar, I am sustained by the altar's offering. Having food and clothing, I will be content with these and, naked, follow the naked cross.

C. VI. Let one who is chosen into God's lot possess nothing besides God.

Likewise Ambrose, *On Flight from the World*, [c. 2]. One whose portion is God ought to care for nothing except God, lest he be impeded by the duty of another necessity. For what is conferred upon other offices is taken away from the worship of religion and from this office of ours. For this is the true flight of a priest: renunciation of household members and a certain estrangement from the most beloved, so that one who desires to serve God may deny himself to his own.

C. VII. Clerics and those devoted to God are permitted neither to conduct lawsuits nor to possess anything of their own.

Likewise Jerome to a certain Levite of his, *On the Two Kinds of Men*. There are two kinds of Christians. One kind is that which, bound to divine office and devoted to contemplation and prayer, ought to cease from every clamor of temporal things, as are clerics and those devoted to God, namely converts. For *klēros* in Greek is "lot" in Latin. Hence men of this kind are called clerics, that is, chosen by lot. For God chose all of them as His own. These indeed are kings, that is, ruling themselves and others in virtues, and thus they possess a kingdom in God. And this is designated by the crown on the head. They possess this crown by the institution of the Roman Church as a sign of the kingdom which is awaited in Christ. But the shaving of the head is the laying aside of all temporal things. For they, content with food and clothing and possessing no property among themselves, ought to possess all things in common. § 1. But the other kind of Christians consists of the laity. For *laos* is "people." They are permitted to possess temporal things, but only for use. For nothing is more wretched than

to despise God on account of money. They are permitted to take a wife, cultivate land, judge between man and man, conduct lawsuits, place offerings upon altars, render tithes, and thus they will be able to be saved, provided they avoid vices by doing good.

C. VIII. Let clerics possess nothing of their own.

Likewise Gregory to Augustine, Bishop of the English, [responses cc. 1 and 2]. Because your fraternity, instructed in monastic rules, ought not to be separated from your clerics in the church of the English, which under God as author was recently led to the faith, it ought to institute that manner of life which existed at the beginning among our Fathers, among whom none possessed as his own anything from the things which he possessed, but all things were common to them. § 1. But if there are any clerics established outside sacred orders who cannot contain themselves, they ought to take wives and receive their stipends externally, because concerning the same Fathers we also know it to be written "that they distributed according as each had need." Thought and provision must also be given concerning their stipend, and they are to be held under ecclesiastical rule, so that they may live with good conduct, keep watch in chanting psalms, and, with God as author, preserve heart, tongue, and body from all unlawful things. § 2. But concerning those living in common, what is there for us now to say about making portions, furnishing hospitality, and fulfilling mercy, since everything which remains beyond necessities is to be expended upon pious and religious causes? The Lord and Master says to all: "Give what remains as alms, and all things are clean for you."

C. IX. All things ought to be common to clerics.

Likewise Pope Urban to all Catholics, [sole letter, c. 1]. We know that you are not ignorant that until now a common life flourished among all Christians, and by God's grace still flourishes, especially among those who are chosen in the Lord's lot, that is, clerics, as is read in the Acts of the Apostles: "But the multitude of believers had one heart and one soul, nor did anyone say that anything among the things he possessed was his own, but all things were common to them." And below: § 1. Whoever among you has undertaken a common life and vowed that he would possess nothing of his own, let him see that he does not make his promise void, but faithfully guard what he promised the Lord, lest he acquire condemnation for himself rather than reward, since it is better not to vow than not to fulfill the vow as well as one can. For those who made a vow or received the faith and did not fulfill the vow or ended their lives in evils are punished more gravely than those who died without a vow or faith and nevertheless performed good works.

C. X. Concerning the same.

Likewise Augustine in the sermon *On the Common Life of Clerics*. I do not wish anyone to find in us an occasion for living badly. For, as the Apostle says, we provide good things not only before God but also before all men. On account of ourselves our conscience is necessary for us; on account of you our reputation ought not to be polluted but to flourish among you. There are two things: conscience and reputation. Conscience is necessary for you, reputation for your neighbor. One who, trusting in conscience, neglects his reputation is cruel. And below: § 1. No one in our community is permitted to possess anything of his own; but perhaps some do possess something. No one is permitted, but those who possess do what is not permitted. And a little later: § 2. It is not permitted to possess a reserve fund. It is not for bishops to preserve gold and draw back the hand of one begging from them. Daily

so many seek, so many groan, so many needy persons address us, that we leave more of them sorrowful because we do not possess what we could give to all. Therefore we possess no reserve fund. And below: § 3. One who possesses property of his own or wishes to possess it and live from his own property and act contrary to these precepts—it is little for me to say that he will not remain with me; rather, he will not even be a cleric. For I had said, and I know that I said it, that if they were unwilling even to undertake a communal life with me, I would not take the clericate from them; let them remain separately, let them live separately. For I preferred to possess even lame men rather than mourn dead ones. For one who is a hypocrite is dead. Therefore, just as I would not take the clericate from whoever had wished to remain outside and live from his own property, so now, because by God's favor this communal life has pleased them, whoever lives in hypocrisy, whoever is found possessing property of his own, I do not permit him to make a testament concerning it, but I will erase him from the tablet of clerics. Likewise: § 4. One who does not wish to remain with me and live in common may have liberty, but let him see whether he can possess the inheritance of felicity.

C. XI. Those who renounce their own property and promise to live in common are not permitted to possess anything.

The same, [sermon III *On the Common Life of Clerics*]. Do not say that you possess anything of your own, but let all things be common to you. And below: § 1. But whoever has advanced into so great an evil that he secretly receives letters or any gift from someone, if he confesses this voluntarily, let him be spared and let prayer be made for him. But if he is detected and convicted, let him be amended more gravely according to the judgment of the priest or superior. And below: § 2. Since the brothers of this congregation of ours renounced not only their resources but also their own wills in the very reception of the order and subjected themselves entirely through promised obedience to the power and commands of others in Christ and for Christ, it is certain that they ought to possess, hold, give, or receive nothing without the superior's permission. § 3. But if a relative, friend, or any person wishes to offer something to any of the brothers, let it first be disclosed to the prior and then received if he himself has commanded it. Nevertheless, let nothing else be done with it except what has pleased the prior.

C. XII. Concerning the same.

The same, [tractate L on chapter 12 of John]. Take the example of the Lord dwelling upon earth. Why did He have a purse, He whom angels ministered to, unless because His church was going to have a purse? Why did He admit a thief, unless so that His church might remove thieves when she suffers them?

C. XIII. The prelates of churches are made dispensers of those churches' goods.

Likewise Prosper, [*On the Contemplative Life*, book II, c. 9]. It is expedient that the resources of the church be possessed and that one's own be despised for love of perfection. For they are not one's own resources, but the common resources of the church; and therefore whoever, after all the things which he possessed have been relinquished or sold, becomes a despiser of his own property, when he has been made prelate of a church, is made dispenser of all the things which the church possesses. Finally, Saint Paulinus, as you yourselves know better, sold the immense estates which had been his and distributed the proceeds to the poor; but when he had been made bishop, he did not despise the

resources of the church, but dispensed them most faithfully. By this deed he sufficiently showed both that one's own possessions ought to be despised for the sake of perfection and that the resources of the church, which are indeed common possessions, can be possessed without impediment to perfection. What of Saint Hilary? Did he not himself either leave all his possessions to his relatives or sell them and distribute the proceeds to the poor? Nevertheless, when by the merit of his perfection he was made bishop of the church of Arles, he not only possessed the things which that church then had, but even enlarged them by the numerous inheritances of the faithful which he received. And so, if men most learned beyond ambiguity in both secular and divine letters had known that the goods of the church ought to be despised, they who had relinquished all things ought never to have received them.

C. XIV. Let deacons or any religious persons be compelled to lead a regular life.

Likewise Gregory to Felix, Bishop of Acropolis, [book II, letter 29]. Since the churches of Velina, Vicenza, and Blandina are situated near you, we therefore solemnly enjoin upon your fraternity the work of visiting them, admonishing this before all things: that, wherever deacons or religious persons of the aforesaid churches or of their dioceses are found, they live strictly and canonically.

C. XV. Why estates were sold in the primitive church.

Likewise Pope Melchiades. The apostles foresaw the future church among the gentiles; for that reason they acquired no estates in Judea, but only prices for sustaining the needy. But when the church grew amid the tempests and adversities of the world, it reached the point that not only the gentiles, but even the Roman princes, who held the monarchy of the whole world, hastened to the faith of Christ and the sacraments of baptism. Of these the most religious man Constantine, the first openly to attain the faith of the truth, gave permission throughout the whole world to those dwelling under his rule not only to become Christians, but also to construct churches, and decreed that estates be granted. Finally, that aforesaid prince bestowed immense gifts and founded the fabric of the temple of the first see of blessed Peter, to such a degree that he relinquished the imperial seat and granted it to blessed Peter and his successors, to benefit them. § 1. And he himself, presiding over the holy synod which was assembled at Nicaea, when he perceived that the complaint of certain persons was to be brought before him, said: "You can be judged by no one, because you are reserved for the judgment of God alone. For you have been called gods, and for that reason you cannot be judged by men." From that time onward, religious men consecrated to the Lord not only the possessions and estates which they had possessed, but even themselves, building basilicas on their lands in honor of the holy martyrs throughout the cities, as well as innumerable monasteries, in which a company of those serving the Lord might assemble.

C. XVI. Why the estates of the faithful are not to be alienated from the church today.

Likewise Pope Urban, [sole letter, c. 1]. But the chief priests and others, as well as the Levites and the rest of the faithful, seeing that they could confer more benefit if they delivered to the churches over which bishops presided the inheritances and fields which they were selling, because from their revenues more and finer things could be supplied, both in present and future times, to the faithful leading a common life than from their price, began to deliver to the mother churches the estates and

fields which they had been accustomed to sell, and to live from their revenues. § 1. But those goods were, and remain even until now, under the dominion of the bishops of the individual parishes, who hold the place of the apostles, and ought always to remain so in future times. From them the bishops and their faithful dispensers ought to supply all necessities to all who wish to live a common life, as well as they can, so that no needy person may be found among them. § 2. For those goods are called the offerings of the faithful, which are offered to the Lord by the faithful. § 3. Therefore, through the aforesaid increases, with the Lord assisting, the churches over which the bishops preside have grown to such a degree, and the greater part of them abound in such extensive goods, that no one leading a common life in them is needy, but receives all necessities from the bishop and his ministers. § 4. Therefore, if anyone should arise in present or future times who endeavors to tear this away, let him be struck by the already-stated condemnation.

[C. XVII.]

Likewise Augustine, [tractate LXII on John]. The Lord had a purse, preserving the things offered by the faithful, and He gave from it both for the necessities of His own and to other needy persons. Then for the first time the form of ecclesiastical money was instituted, so that we might understand that what He commanded—that no thought be taken for tomorrow—was not commanded for the purpose that no money should be preserved by the saints, but lest God be served for the sake of those things and justice be abandoned through fear of poverty. PART II. GRATIAN. From all these things it is clear that clerics are in no way permitted to possess anything of their own; but if they have possessed something, they will not be clerics, yet the clericate is not to be taken from them. Hence Augustine says in the same sermon:

C. XVIII. The clericate is not taken away from those who wish to possess something of their own.

Certainly it was I who had established that I would ordain no cleric unless he wished to remain with me, so that if he wished to depart from his purpose I might rightly take the clericate from him. Behold, in the sight of God and yours I change my counsel. Those who wish to possess something of their own, for whom God and His church do not suffice, may remain where they wish and where they can; I do not take the clericate from them. I do not wish to possess hypocrites. Who does not know that it is evil? It is evil to fall from one's purpose, but it is worse to feign the purpose. And a little later: § 1. If he does not preserve holiness outwardly, he has fallen by half; if he has inwardly maintained a pretense, he has fallen wholly. I do not wish him to have a necessity of pretending. I know how men love the clericate. I take it from no one unwilling to live in common with me. GRATIAN. On the contrary, there are other authorities by which it is conceded that not only others, but even bishops, may possess property of their own. Hence it is read in the Council of Agde, [c. 8]:

C. XIX. Let bishops leave to their heirs their own or acquired goods.

Let bishops, if they wish, leave to their heirs their own or acquired goods, or whatever they possess of their own. But whatever has come from the provision of their church, whether from fields, fruits, or offerings, we have decreed that all of it be reserved under the right of the church.

C. XX. Concerning the same.

Likewise from the Council of Pope Martin, [c. 15]. The things which pertain to the church ought to be manifest to the priests and deacons who are around the bishops, so that if an unexpected passing should happen to the bishop, the goods of the church can in no way be diminished and perish; nor should the bishop's own goods suffer interference on account of the goods of the church, so that neither the church incurs loss nor the bishop is proscribed in his own goods on account of the goods of the church. The same was established in the Canons of the Apostles, [c. 40], in which it is read:

C. XXI. Concerning the same.

Let the bishop's own goods be manifest, if indeed he has goods of his own, and let the Lord's goods be manifest, so that, when dying, the bishop may have the power to leave his own goods as he wishes and to whom he wishes, and lest, under the pretext of ecclesiastical goods, those things which are proved to belong to the bishop be placed under interdict. For perhaps he has a wife, or children, or relatives, or servants. And this is just before God and men: that neither the church suffer detriment through ignorance of the pontiff's goods, nor the bishop or his relatives be proscribed under the pretense of the church, and those who pertain to him fall into lawsuits and be defamed by the injuries of his death.

C. XXII. If a bishop is in need, let him take necessities for himself and his own from the goods of the church.

Likewise in the same canons, [c. 41]. But from those things which the bishop needs, if indeed he is in need, let him also receive for his own necessities and for the use of pilgrim brothers, so that nothing at all can be lacking to him. For the law of God commands that those who serve the altar be fed from it.

C. XXIII. Let the bishop dispense ecclesiastical goods.

Likewise from the Council of Antioch, c. 25. Let the bishop have power over ecclesiastical goods for dispensing to all who are in need, with the greatest reverence and fear of God. But let him himself also partake of those things which he needs, if indeed he is in need, both for his own necessary uses and those of the brothers who are received by him, in such a way that they are defrauded on no occasion whatever, according to the holy Apostle saying thus: "Having food and covering, with these we are content." But if he is by no means content with these, but turns the goods of the church to his own domestic uses, and does not manage its income or the fruits of its fields with the knowledge of the priests and deacons, but commits power over these things to his domestics, relatives, brothers, or sons, so that through persons of this kind the goods of the church are secretly harmed, let that man pay the penalties to the synod of the province. But if the bishop or the priests who are with him are accused in another manner also, because they usurp for themselves those things which pertain to the church, whether from fields or from any other ecclesiastical resource, so that the poor are thereby afflicted, while both the word of preaching and those who dispense are exposed to accusation and blasphemies, this also ought to be corrected, with the holy synod approving what is fitting.

C. XXIV. Let the goods of the church be in the bishop's power.

Likewise in the Canons of the Apostles, [c. 41]. We command that the bishop have the goods of the church in his own power. For if the precious souls of men have been entrusted to him, much more ought he to exercise care concerning money, so that by his power all things may be dispensed to the needy through priests and deacons and administered with fear and all solicitude. But from those things which he needs, etc., as above. GRATIAN. Therefore, since in the Council of Agde and that of Pope Martin, and in the Canons of the Apostles, it is said, "Let the bishop's own goods be manifest," while in the same canons and in the Council of Antioch it is commanded that the bishop partake of the goods of the church, if indeed he is in need, is it not openly shown that the bishop may freely possess goods of his own? For by saying, "if he is in need of the goods of the church," it indicates that he possesses goods of his own, which perhaps do not suffice for his necessities. How, therefore, will a cleric, if he wishes to possess something of his own, not be a cleric, while a bishop possessing goods of his own not only does not cease to be a bishop, but is even commanded to have all ecclesiastical resources in his power? § 1. But it must be noted that eastern bishops have wives and children, while certain bishops from our regions, when established in the laity or in minor orders, have wives and children and, either when the wife's death intervenes or when continence is preserved by an equal vow, advance to sacred orders. It is conceded to all these to possess goods of their own for their own use and that of their people. But those who have been handed over to the sacred soldiery from infancy are in no way permitted to possess goods of their own, because there is no excuse for property in their case, unless perhaps, by retaining their own goods, they abstain from the expenditures of the church. Prosper testifies that this can be done, [*On the Contemplative Life*, book II, c. 12], saying:

C. XXV. Concerning those who are so infirm that they cannot renounce their own goods.

But those who are so infirm that they cannot renounce their possessions possess their own goods without sin if they leave to the dispenser, to be conferred upon those who possess nothing, the things which they were going to receive, because they too relinquish their own things in a certain manner when, content with their own goods, they receive none of the things which they judge to be owed to their labor or order. GRATIAN. But concerning the goods of the church it is asked whether it is permissible for them to be divided through prebends, so that each person may claim the annual revenues specially for himself. That this cannot be done is proved by argument and authority. Clerics are the successors of those concerning whom it is said: "But the multitude of believers had one heart and one soul." It is therefore necessary that they follow the life of those whose rank they administer in the church. Therefore they shall not claim anything as their own for themselves, but all things will be common to them. Likewise Pope Urban says, [sole letter, c. 2]:

C. XXVI. Let the bishop dispense the goods of the church as common goods.

The goods of the church are faithfully to be dispensed with the greatest fear, not as one's own but as common goods and things offered to the Lord, and for no uses other than those aforesaid.

C. XXVII. A bishop is not permitted to turn the goods of churches to his own uses.

Likewise from the synod held at Rome by Pope Eugenius, [II, c. 16]. Let none of the bishops be permitted to possess for his own use movable or immovable goods from the subject congregations and other pious places, lest the greater churches be enriched beyond measure and the lesser be found poor through such a deed. Let one acting contrary to this be held under restraint by canonical authority. GRATIAN. Therefore, if the goods of the church are to be held not as one's own but as common, since no one says concerning a common possession, "This is mine," neither can anyone say concerning the goods of the church, "This is mine," lest he appear not to imitate the charity of those among whom nothing belonged to anyone as his own, but all things were common to them. § 1. To these things the answer is thus: Just as, while the perfection of charity remains, the distribution of ecclesiastical resources is made according to the distinction of churches when the possessions of this church are committed to some persons to dispense, from which, although the goods of the church ought to be common to all, he may nevertheless first supply necessities to himself and to those serving his church, intending to minister the remainder which is left over to the uses of the faithful, so too the prebends of churches, while the same charity remains, can be distributed piously and religiously. Nor does he then serve the goods of the church as his own, but as goods for common uses, so that from those things which are assigned to him he may first receive necessities for himself; but if any things remain beyond his necessities, he may expend them for the common uses of the church. Hence Augustine to Boniface, [the Count, letter L]:

C. XXVIII. Concerning the same.

If we privately possess what suffices for us, those things are not ours of which we in a certain manner conduct the administration; we do not claim ownership of them for ourselves by damnable usurpation. GRATIAN. It has been shown in what manner clerics are permitted to possess property of their own, and in what manner they are not. Likewise, in what manner the goods of the church can be divided through prebends.

Question II

GRATIAN. PART I. It is now asked: if priests are known to have given some things from the goods of the church, will those goods remain with any validity for those who received them? That the goods of the church can in no way be alienated, and that those alienated cannot be possessed, is proved by many authorities. For Pope Stephen says:

C. I. One who takes away the money of the church is condemned as a murderer.

One who takes away, defrauds, and seizes the moneys of Christ and the church will be reckoned as a murderer in the sight of the Judge.

C. II. Whatever has been usurped from sacred vessels or furnishings by any cleric is to be restored to the church.

Likewise Pelagius to Bishop Hostilius. At the suggestion of Augustus, notary of our see, we learned that your affection had indicated to him by letters that certain men of your clergy, and especially of

the parishes pertaining to you, had alienated not a few sacred vessels or furnishings and had perpetrated certain things of this kind which are foreign to a religious purpose. But you desire your charity to be fortified by the authority of our command, so that it ought to pursue or avenge these things with appropriate solicitude. Concerning this matter we command by the present words that, with the appropriate urgency of vigilance, you do not fail to exact without the intervention of anyone's delay whatever you discover to have been usurped or alienated from sacred vessels or furnishings by any of the clerics, and to restore it to ecclesiastical uses.

C. III. Whatever is consecrated to the Lord pertains to the right of priests.

Likewise Pope Boniface. Let no one be permitted to be ignorant that everything consecrated to the Lord—whether it be a man, an animal, a field, or whatever has once been consecrated—will be holy of holies to the Lord and pertains to the right of priests. For this reason everyone who takes away, devastates, invades, or seizes it from the Lord and the church to which it belongs will be inexcusable; let him be judged as sacrilegious until amendment and satisfaction to the church, and if he is unwilling to make amendment, let him be excommunicated.

C. IV. Let one who invades ecclesiastical estates be subject to excommunication.

Likewise Gregory VII, [book VI of the *Register*, in the council, c. 1]. Whoever among soldiers, or any person of whatever order or profession, receives ecclesiastical estates from any king or secular prince, or from unwilling bishops or abbots or any rulers of churches, or invades them or holds them with their consent, shall be subject to excommunication unless he restores those estates to the churches.

C. V. One who molests ecclesiastical estates incurs the crime of sacrilege.

Likewise Pope Pius, [letter II]. Certain persons apply to human uses estates handed over to divine uses and withdraw from our God, to whom they were handed over, those things so that they may serve themselves. Therefore the affront of that usurpation is to be repelled by all, lest estates dedicated to the uses of the heavenly mysteries be molested by certain persons rushing upon them. But if anyone has presumed to do this, let him be judged as sacrilegious.

C. VI. Concerning the same.

Likewise Anacletus, [Pope, letter I]. One who takes anything from father or mother and says that this is not a sin is a participant with a murderer. Without doubt God, who created us, is our Father; but our mother is the church, which regenerated us in baptism. Therefore one who seizes, takes away, and defrauds the moneys of Christ and the church is a murderer.

C. VII. Let one who invades the goods of the church make fourfold restitution.

Likewise Pope John III, [to Archbishop Zachary]. It was decreed in the ancient statutes of the church that one who invades the goods of another shall not go unpunished, but shall restore all things with multiplication. Hence it is written in the Gospel: "If I have defrauded anyone of anything, I restore

fourfold." And provision is made in the laws of the world: "One who takes away another's property, etc." (as below in the authority of Pope Eusebius).

C. VIII. Let invaders of ecclesiastical goods be punished according to the tenor of secular laws.

Likewise Gregory to Constantia, Queen of Gaul, [book IV, letter 33]. Since I know that the most devoted lady thinks assiduously about heavenly life and the remedy of her soul, I consider that I commit a fault grievously if I remain silent concerning those things which are to be suggested for fear of almighty God and do not assiduously admonish you, most holy lady, concerning ecclesiastical peace. The outcry of Julian, our brother and fellow bishop, recently saddened me exceedingly, especially since the estates of his own—that is, of the church—were plundered by most wicked robbers and burned by nocturnal fires in the manner of thieves; and since those same wicked men, in accordance with the decrees of our predecessor Boniface, were unwilling to make amendment for the immunity; and since the laws of the world also wished these matters to stand in the same way, as the common law bears witness, in which it is written thus: "If anyone with armed hand, with up to four men, comes into another's village to do evil, the one who is first shall pay nine hundred solidi for the unlawful presumption, but each one of his followers eighty solidi. But if he has set a fire, he shall pay ninefold; and he shall restore the plunder fourfold."

[C. IX.]

If the laws of the world wished to possess such justice, why ought divine law to be inferior, when in the presence of Truth Himself it was praised in Zacchaeus that, if he had defrauded anyone, he would restore fourfold? And because the highest good in affairs is to cultivate justice, to preserve each person's rights for him, and not to permit that which belongs to power to be done against subjects but to preserve what is equitable—and we altogether trust both that you love this and that you strive for it—we therefore transmit Peter, our brother and fellow bishop, from the bosom of the holy Roman Church to your Excellency in the month of November of the present year, in the second indiction, so that, when the brothers of that province have been assembled into one, immunity, presumption, and sacrilege may receive such an end by canonical authority and your royal dignity that afterward the members of the devil, the sons of wickedness, may not presume such things against holy church while you also reign there.

C. X. One who takes away property of the church shall restore elevenfold what he took.

Likewise Pope Eusebius, [letter II]. Provision is made in the laws of the world: "One who takes away the property of another shall restore elevenfold to the person from whom the property was seized the things that were taken." And in divine law it is read: "Accursed is everyone who moves the boundaries of his neighbor." Therefore let such things not be presumed without vengeance, nor practiced without condemnation. Accordingly, if anyone seizes ecclesiastical offerings and what has been consecrated to God, or consents to those doing so, let him be judged as sacrilegious, restore the loss fourfold, and do canonical penance. GRATIAN. On the contrary, Gregory, writing [c. 4 of the responses] to Augustine, Bishop of the English, concerning those who secretly take something from the church:

C. XI. The church ought to receive what was taken from it without increase.

Your fraternity can judge from the person of the thief how he may be corrected. For there are some who, possessing means of support, perpetrate theft, and there are others who offend in this matter from poverty. Hence it is necessary that some be corrected by losses and others by lashes. And when action is taken somewhat more strictly, it is to be done from charity and not from fury, because this is furnished to the very person who is corrected, lest he be handed over to the fires of Gehenna. § 1. You also add with what increase they ought to return those things which they have taken by theft from churches. But far be it that the church should receive with increase what it appears to lose from earthly goods and seek gains from losses. GRATIAN. But the statement of Eusebius is understood to have been made concerning the severity of the laws, and this statement of Gregory concerning ecclesiastical gentleness.

C. XII. Things acquired in the episcopate are not to be alienated.

Likewise Deusdedit, Bishop of Milan. Priests have no permission to alienate goods acquired in the episcopate.

C. XIII. Sacred vessels are not to be alienated except for the redemption of captives.

Likewise from the Sixth Universal Synod, [c. 15]. Renewing the apostolic and paternal canons, this holy and universal synod has determined that absolutely no bishop may sell or in any way alienate treasures and sacred vessels, except for the cause once ordained by the ancient canons, namely for the redemption of captives; nor may he deliver the revenues of churches under emphyteutic agreements, nor sell other rural possessions and through this harm ecclesiastical revenues, which we decree to exist for their proper utility and for the food of the poor and sustenance of pilgrims. And a little later: § 1. But whoever after this our determination has attempted to do anything contrary to this holy see and universal synod shall be deposed as a transgressor of divine goods and commands; the sale or emphyteutic conveyance or any other alienation of the treasures and revenues of the places made by the bishop, whether in writing or without writing, is of course to be made altogether void. But one who has received or bought anything from the aforesaid treasures or revenues and has not restored to the church again the things which belong to the church, and has not returned the charter of sale or emphyteusis to be cut up, shall be anathema until he has done what was confirmed by this holy and universal synod. § 2. But if a bishop has been convicted of constructing a monastery from ecclesiastical revenues, let him deliver that monastery itself to the same church.

C. XIV. Sacred vessels are not prohibited from being alienated for the redemption of captives.

Likewise Gregory, [book VI, letter 35], to Lord Bishop of Messina. Both the sacred canons and legal statutes permit the furnishings of the church to be sold for the redemption of captives.

C. XV. The goods of the church are lawfully expended for the redemption of captives.

The same to Demetrius and Valerian, Clerics of Fermo, [book VII, indiction 2, letter 14]. The statutes of the sacred canons and legal authority permit ecclesiastical goods lawfully to be expended in the

redemption of captives. And therefore, since we have been informed by you that eighteen years ago Favius, bishop of the church of Fermo, expended eleven pounds of silver from the same church to the enemy for the redemption of you and of your father Passivus, our brother and fellow bishop but then a cleric, as well as of your mother, and that from this you possess a certain fear lest at some time what was given be demanded back from you, by the authority of this command we have provided that your suspicion be removed, establishing that neither you nor your heirs shall at any time sustain vexation from a demand for repayment on this account, nor shall any question be raised against you by anyone.

C. XVI. The goods of a desolate church are not to be preferred to captives.

The same, [book VI, letter 35, to Lord Bishop]. Just as it is altogether grave to sell ecclesiastical furnishings without cause, so again it is a fault, when a necessity of this kind is imminent, to prefer to one's captives the goods of an especially desolate church and to cease from their redemption. PART II. GRATIAN. But Pope Nicholas determines what penance is to be imposed upon invaders and robbers of this kind, who seize with polluted hands sacred vessels and the other things dedicated to divine worship and handle them as though profane, writing to Frontarius, Archbishop of Bordeaux.

C. XVII. What penance is to be imposed upon invaders of ecclesiastical goods.

Concerning the nefarious man named Burgandus, who, moved by insane rage, did not doubt to entangle himself in diabolical snares and, after the manner of gentiles, lying in ambush along precipitous roads and crossroads, presumed with demonic daring to inflict nefarious invasions and violent plunder upon you—while you remained with your clerics in a village of your church and strove to instruct the people with the salutary admonitions of doctrines, refreshed the empty hearts of men with the bread of the spiritual word, and possessed the praiseworthy desire of your own salvation to visit the holy thresholds of the apostles Peter and Paul—after gathering the followers of his malice and accomplices of iniquity; and, as the text of your letter declares, he presumed to seize with polluted hands the sacred altar, the sacred vessels of the Lord's body and blood, and moreover the holy chrism, as though they were cheap things and suited to common use: your affection consulted us whether, if he or those who were with him in so impious and iniquitous a crime should at some time, drawn by divine grace, wish to come to penance, by what bond of penance you should constrain them, and you took care to request the determination of our institution. Concerning them, if indeed it is so, we command that, when they have hastened to return to penance, they remain outside the church of God for one year, because they did not doubt to carry off its most sacred vessels by plundering outside the rite of the Christian faith. But in the second year let them remain before the doors of the church without communion. In the third year let them enter the church of God and stand among the hearers without an offering, eating no meat and drinking no wine except on the days of the Lord's Nativity and Resurrection. Moreover, in the fourth year, if during those preceding three their labor of penance has been fruitful, let them be restored to the communion of the faithful and, promising with the whole intention of their mind that they will never do such things thereafter, let them merit to receive the body and blood of the Lord; and until the seventh year let them remain penitents three days in the week without eating meat or drinking wine.

C. XVIII. Let a bishop not presume to alienate or usurp the goods of the church.

Likewise in the Council of Pope Leo IV. PART III. We admonish and affirm irrefragably that no bishop or priest presume to usurp the property of his title, nor attempt to take away because of friendship, fear, or a gift the revenue offered by Christians to holy places, lest the church of God be reduced to nothing. Any bishop or priest who has presumed to do this shall without doubt undergo canonical vengeance and be compelled to return what was unjustly taken from the church, in such a way that thereafter they can possess no force for litigating or possessing these things.

C. XIX. A bishop or abbot is not permitted to alienate the goods of the church.

Likewise from the history of Eusebius, Bishop of Caesarea, chapter XII. Whatever bishop or abbot wishes to transfer anything from the revenues of the bishopric or monastery into the hands of princes, or even to confer it upon another person, let what is established to have been given be void, according to the canon of the holy Apostles, which says: "Let the bishop possess solicitude for all ecclesiastical goods and dispense them as though God were watching. But he is not permitted to defraud anything from them, or to give to his own relatives the things which are God's. But if they are poor, let him distribute to them as to poor persons, yet let the things which belong to the church not be defrauded under their pretext." § 1. But if the bishop offers the excuse that the field causes loss and exists to no profit, even so let the field or place not be given to princes, but to clerics or cultivators. § 2. But if a prince has employed cunning and has bought the field from a tenant or from the clergy, let the sale be void and let it be restored to the bishopric and monastery. Let a bishop or abbot doing this be cast out, as one who scattered the things which he did not gather.

C. XX. The pope is not permitted to alienate the estates of the church.

Likewise Pope Symmachus, [in Synod III, c. 4 and following through c. 9]. The pope is not permitted to alienate an estate of the church in any manner for any necessity, nor to give rural lands in usufruct, except only houses which are maintained at no small expense in any cities whatsoever. Let all guardians be bound by this law, so that the giver, the assenter, and the seller lose their honor. And let one who has subscribed be anathema together with the one who gave or received, unless it is restored. Let any ecclesiastical persons also be permitted to object and to reclaim alienated goods with their fruits. It is said to be fitting that this be observed not only in the apostolic church but also in all churches throughout the provinces.

C. XXI. One who sells ecclesiastical goods shall not dare to approach the altar.

Likewise, [in Synod VI]. One who dares to invade ecclesiastical goods, to possess them unjustly, or to persist in an iniquitous or unjust defense of them is unworthily permitted to hasten to the altar of the Lord. § 1. Concerning these things there ought to be such provision that admonition precedes vengeance, and, with equity as patron, let the person who took away goods unjustly, or retains goods unjustly taken, restore the goods usurped unjustly in accordance with the laws. But if he has neglected this and necessity has compelled it, let matured priestly severity finally strike the robber. § 2. For it is exceedingly iniquitous and an immense sacrilege that whatever each person conferred upon or certainly left to a venerable church, whether for the remedy of sins or for the salvation and

repose of their souls, should be transferred or converted to another purpose by those by whom it especially ought to be preserved, that is, by Christians and men who fear God. Therefore one who has not provided against these things and, otherwise than has been written, has sought, received, or possessed estates delivered to the church, unless he corrects himself quickly, shall be struck by the anathema by which an angered God strikes souls; and let there be anathema for the receiver and giver or possessor, and perpetual fellowship with the appointed penalty. Nor before the tribunal of Christ shall he fortify himself with any obstacle who, contrary to divine law and without any consideration of piety, dissipates the things left by religious souls for the sustenance of the poor.

C. XXII. Let those who invade the goods of the church by the authority of princes be excommunicated.

Likewise Nicholas to Ado, Archbishop of Vienne, [in the letter whose beginning is "Because of Your Holiness"]. Concerning goods which were once contributed and dedicated to God and afterward are invaded and plundered by certain persons under the pretext of a grant from princes, we decree that you first consult the prince in order to cut off so presumptuous a faction and to learn whether the grant belongs to him or the presumption to the invader. But if the bestowal of the prince was disordered, let the prince himself be reproved for amendment. But if the presumption is shown to belong to the invader, let him be restrained by the vengeance of excommunication until amendment.

C. XXIII. Nothing from the goods of the church is to be alienated.

Likewise Gelasius to Justin the Archdeacon and Faustus the Defender. PART IV. For we have considered it prudent for you and your reputation that someone be substituted with you in the place of your pontiff by the same man, who may dispose all things equally in his name, so that you may recall all estates to your administration and not think that any land of the church is to be assigned to any cleric for his portion, lest it be diminished through carelessness and negligence; rather, you shall carry to the bishop the entire sum of rent collected from all rural and urban estates. From this collection, however, let account be taken of what is perceived to be necessary for matters or expenses of needs that arise, so that it may be sequestered from the common fund; and let four portions be made in every way either from the offering of the faithful or from this rent, so that the bishop takes one for himself, distributes another to the clerics according to his judgment and choice, causes a third to be distributed to the poor with the knowledge of all, and as to the portion which belongs to the buildings, we decree that it be paid by your expenditure according to the bishop's ordering. If anything should perhaps remain from the annual expenditure, after a suitable custodian has been chosen by each party, let it be deposited in reserves, so that, if a greater building project arises, what the diligence of a different time was able to preserve may be a subsidy, or else let a possession be purchased which has regard for common utilities.

C. XXIV. Let one who tramples ecclesiastical privileges be deprived of participation in the divine gift.

The same to Bishops Majoricus, Serenus, and John. Those who, with human laws trampled by an uncivil condemnation and reverence for religion cast aside, either strive to trample ecclesiastical privileges or anywhere leap forth to the loss of the poor, and who, even when admonished and convicted of this, do not consent to suppress their wickedness and repair the losses inflicted upon sacred goods, are deservedly to be deprived of participation in the divine gift, so that they may lack

the reception of that which they held in contempt by sacrilegious daring. But Celestinus, priest of Serenus our brother and fellow bishop, who, breaking forth against pontifical judgment and against the mandates of the apostolic see, presumed to minister sacred communion to the aforesaid men although he could not have been ignorant of the sentence of his own priest, is to be driven immediately from ecclesiastical office, so that no minister of the church may strive to come against pontifical institutions.

C. XXV. Concerning the same.

The same to the same men. We have decreed that the administration or patrimony of the church of Volterra, which we have learned has hitherto been forsaken after the condemnation of Eucharistus, by whose depravity it had been dispersed, is to be delegated to your care, so that by the diligence with which we judge you to be vigilant for the utilities of the church, you may restore the estates to their ancient cultivation and recall any slaves who have been sold or given away. Let the possessions also which you see to be held by Bishops Eumachius and Opilio, or by others under any right whatsoever, be recalled nonetheless, because against the statutes of the synod the estates could not be alienated by bishops by any contrivance. Let purchasers have recourse against the person who presumed to alienate anything from the goods of the church by an unlawful sale, in such a way that you carry the annual rents to the pontiff, for whom it is fitting that his privileges be preserved intact in every respect, so that by his dispensation the customary portions may proceed, in such a way that the pontiff by his own ordering distributes the fourth portion which pertains to them, according as he recognizes the position and merit of each person. The same is likewise to be done from the offering of the faithful, so that the bishop may distribute a fourth to the clerics according to the consideration of his choice. Let the portion for buildings also be paid by your expenditure with the bishop knowing and directing, so that you permit absolutely nothing to be generated to the detriment of any property.

C. XXVI. Let two portions of revenues and offerings be committed to the clerics.

The same to the clergy, order, and people of Brindisi. Since the bishop whom you sought, Julian, now my brother and fellow bishop, has been granted to you, it was necessary, when he was immediately sent back to his church, that our writings likewise be directed to you, by which you might know that he had been commanded never to presume unlawful ordinations. And below: § 1. Let him divide the revenues and offerings of the faithful into four parts, of which he himself is to retain one, distribute another to the clerics for the assiduity of their offices, possess a third to be faithfully expended upon the buildings, and a fourth upon the poor and pilgrims; he will have to render an account of these to the divine examination.

C. XXVII. How many portions are to be made from the offerings of the faithful, and which is to come to whom.

The same, [in the letter to the bishops throughout Lucania and Bruttium, c. 29]. But it is fitting that four portions be made both from the revenue and from the offering of the faithful, insofar as the resources of each church allow, just as was reasonably decreed long ago: one of these is to belong to the pontiff, another to the clerics, a third to the poor, and a fourth is to be applied to the buildings. Just as it will pertain to the priest to pay the aforesaid amount intact to the ministers of the church, so let the cleric know that he is insolently to demand nothing beyond the sum delegated to him. But

let the manifest restoration of holy places show that those things attributed to ecclesiastical buildings have truly been expended upon this work, because it is impious if, when the sacred buildings have been left destitute, the prelate turns to his own gain the expenditures assigned to them. Likewise, although he is seen as one who will have to show by divine accounts that he dispensed the portion itself assigned to the poor, nevertheless, according to what is written, "That they may see your good works and glorify your Father who is in heaven," it ought also to be proclaimed by present testimony and not passed over in silence by the praises of good reputation. Therefore let none of the clerics, etc.

C. XXVIII. Let three portions of the offerings and revenues of churches be entrusted to the priest to dispense.

Likewise Pope Simplicius to Bishops Florentius and Equitius, [letter III]. From the revenues of the church or the offering of the faithful, only one portion from them is to be remitted to the bishop; let two, intended to benefit ecclesiastical buildings and the distribution to the poor, be administered by the priest at the peril of his order; let the last be divided among the clerics according to the merits of individuals. And below: § 1. To him, that is Bishop Gaudentius, we specially command this: that he restore those three portions which he is said to have claimed for himself alone for three years.

C. XXIX. From the revenues of the church, even those newly acquired, let a fourth part be distributed to the clerics.

Likewise Gregory to Maximian, Bishop of Syracuse, [book III, letter 11]. We have learned that the canonical disposition of fourths does not arise from the newly acquired revenues of the church, but that the bishops of the places distribute only a fourth of the old revenues and retain for their own uses the things now acquired. Let your fraternity hasten vigorously to amend this depraved and surreptitiously introduced custom, so that fourths may be dispensed according to canonical distribution both from past revenues and from those which have arisen or will arise. For it is unfitting that one and the same substance of the church should be assessed under, as it were, a double law.

C. XXX. Four portions ought to be made from the stipend of the church.

The same to Augustine, Bishop of the English, [in the response to the first question]. It is the custom of the apostolic see to hand down commands to an ordained bishop that four portions ought to be made from every stipend which arises: one, namely, to the bishop and his household on account of hospitality and reception; another to the clergy; a third to the poor; and a fourth for repairing churches.

[PALEA.

C. XXXI. Concerning the same.

Likewise from the Council of Toledo. We decree that care for the laity presses upon all bishops, so that if they find any persons in the faith of Christ, they love them with exceeding affection. Moreover, we confirm that, if they receive any gifts from them, they shall immediately divide them into four parts, so that the first part, according to the commands of the apostles, is diligently assigned to the restoration of title churches as well as cemeteries; the second to the clerics; the third to all the poor; and the fourth to strangers.]

C. XXXII. Let all priests endeavor to dispense the goods of the church according to the bishop's command.

Likewise from the Council of Agde, [c. 22]. PART V. We establish, as all command, that priests or clerics of the city or diocese, with the right of the church preserved, shall hold the property of the church as the bishops permit, but shall by no means presume to sell or give it. But if they have done so, both the completed sale will not be valid and, from their resources, if they possess any of their own, they shall render the church indemnified, and they shall be deprived of communion.

C. XXXIII. Concerning clerics who suppress the documents of the church or deliver them to adversaries.

Likewise from the same, [Council, c. 26]. If any cleric has presumed with condemnable and punishable obstinacy either to suppress or deny the documents by which the possession of the church is confirmed, or perhaps to deliver them to adversaries, let him repay from his own resources whatever loss was inflicted upon the church through the absence of the documents, and let him be deprived of communion. But those who, impiously solicited to the loss of the church, receive anything from the betrayers shall be held by the preceding sentence.

C. XXXIV. Let a bishop who has no heirs appoint no one other than the church as his heir.

Likewise from the same, [c. 33]. If a bishop who has no sons or grandsons leaves someone other than the church as his heir, whatever he presumed concerning the church's goods for a cause or necessity not belonging to the church, what he alienated or gave shall be held void. But if he has sons, provision for the indemnity of the church shall be made from the goods which he left by his heirs.

C. XXXV. Let those who are constituted in the clergy presume to alienate nothing from the goods of the church.

Likewise from the same, [c. 49]. Deacons or priests established in a parish shall dare to exchange, sell, or give nothing from the goods of the church entrusted to them, because they are known to be goods consecrated to God. Likewise, priests shall presume to alienate nothing from the goods of the church committed to them, as was stated above. But if they have done so, having been convicted in a council and deposed from honor, let them restore from their own property another amount equal to that which they are seen to have presumed upon. § 1. We also command that freedmen whom priests or deacons wish to make from the church committed to them perform the services of the church. But if they have disdained to do so, it was resolved that they return to their former servitude.

C. XXXVI. Whatever is alienated by a priest from a possession under ecclesiastical right shall be held null and void.

Likewise from the same, [c. 53]. Whatever a parish priest has alienated from a possession under ecclesiastical right shall be held null and void, as regards both the purchase of the buyer and the action of the seller.

C. XXXVII. Alienations made by intruders and ordinations made without the consent of the clerics are void.

Likewise Pope Urban. We judge void all alienations made in any manner by those who obtained through intrusion, or were canonically elected under the name of bishop or abbot who is to be consecrated according to the usage of his church, as well as ordinations of persons made by the same men without the common consent of the clerics of the church, or likewise made through simony. § 1. We also prohibit this in every respect: that no cleric presume to alienate his prebend or any ecclesiastical benefice in any manner. But if this was presumed long ago or shall be at any time, it will be void and subject to canonical vengeance.

C. XXXVIII. When a bishop is dead, or is still at his last extremity, nothing from his goods is to be usurped.

Likewise from the Council of Lérida, [c. 16]. It was resolved among us that this rule be preserved by the constitution of this decree: that when a bishop is dead, or even still at his last extremity, no cleric, of whatever order, office, or grade he may be, shall presume upon anything from his house or endeavor to invade anything from the property known to be the equipment of the house, that is, movable and immovable ecclesiastical property, suppressing, taking away, and concealing nothing by theft and nothing by deceit. Rather, the person to whom the house is committed, after one or two most faithful men have been joined to him, ought to preserve everything until the time when a pontiff is substituted, and to administer the customary sustenance to the clerics who are found in the house. But the substituted bishop shall order the resources of the see which he has received as God commands that he ought to use them with those whom he has learned faithfully obeyed the discipline and charity of his predecessor. But if after this any cleric of whatever order, as was said above, has been proved on any occasion to have taken anything from all the resources, or perhaps to have suppressed it by some deceit, let him be condemned as guilty of sacrilege by a more prolonged anathema, and let foreign communion scarcely be conceded to him, because it is harsh that those who are established to have toiled in the service of the Lord with the bishop of the first see should be afflicted in any measure through contempt by those who are known to have been brooding over their own property or serving and devoting themselves to their own advantages.

C. XXXIX. Let bishops who confer nothing upon the church not grant its servants to liberty.

Likewise from the Fourth Council of Toledo, [c. 66]. And if those who distribute none of their own goods to Christ's poor will be condemned in the future by the voice of the eternal Judge, how much more those who take from the poor what they did not give? Therefore let bishops who have contributed nothing from their own property to the church of Christ fear this divine sentence and not presume, to their own condemnation, to make free persons from the servants of the church. For it is impious that one who has not conferred his own goods upon the church of Christ should inflict loss and strive to alienate the right of the church. Therefore the succeeding bishop shall recall such freedmen to the right of the church without any opposition, because not equity but wickedness absolved them.

C. XL. Concerning clerics who suppress or deny the documents of the church or culpably deliver them to others.

Likewise from the Council of Orléans. If any cleric has presumed with culpable and punishable obstinacy either to suppress, deny, divert, or perhaps deliver the documents by which the possession of the church is held secure, let him repay from his own resources whatever was inflicted upon the church through the absence of the documents.

C. XLI. Ministers of the church are permitted to alienate nothing from its goods without the bishop's permission.

Likewise from the same. Let abbots, priests, and other ministers be permitted to alienate or encumber nothing from ecclesiastical goods or those dedicated to sacred ministry without the bishop's permission and subscription. But if they have presumed to do so, let them be degraded with communion conceded, and let what was rashly alienated be recalled by the bishop's ordering.

C. XLII. Let goods of the church which are alienated in the bishop's absence be recalled to ecclesiastical right.

Likewise from the Synod of Ancyra, [c. 15]. If priests have sold any goods of the church when there is no bishop, it was resolved that, with the contract rescinded, the goods be recalled to ecclesiastical right. But it will be established in the bishop's judgment whether the price ought to be received or not, because it often happens that the income of the alienated goods returns a greater sum in proportion to the price received.

C. XLIII. After the bishop's death let clerics not seize the goods pertaining to him.

Likewise from the Council of Chalcedon, [c. 22]. Clerics are not permitted after the death of their bishop to seize the goods pertaining to him, as is held to have been established by the preceding rules. But if they have done this, let them know that they endanger their own grade.

C. XLIV. Let grants at will and exchanges made by invaders be rescinded.

Likewise from the Council of Metz. Let grants at will and exchanges made during the time of widowed churches by those who occupied the places of bishops be rescinded, and if they are to be made, let them be made with ecclesiastical or civil authority. Likewise Gregory to Maximian, Bishop of Syracuse, [book III, letter II]:

C. XLV. Let stewards take nothing from the goods of the church for the labor of making an inventory.

We have taken care to admonish your charity that, if any bishop has migrated from this light or, which God forbid, has been removed for his excesses, when the stewards and all the leading clerics have assembled and make an inventory of the goods of the church in his presence, all things which are found are to be described precisely, and no particular object or anything else from the goods of the church is to be taken, as it was said was done before, as though for the labor of making the inventory. § 1. With you directing, let visitors of churches and their clerics, who are wearied with them not throughout the parishes of their own city, take something as a subsidy for their labor. For it is just that those who are found to render their service for a time should obtain a stipend.

C. XLVI. Let laymen who dare to plunder the goods of dying clerics be excommunicated.

Likewise from the Council of Pope Urban held in Auvergne. A question was raised concerning laymen who, when bishops or other clerics are dying, invade the goods of the deceased and take them away from the church and the poor. Against them the common anathema of the whole council was pronounced, the pope himself promulgating a sentence of this kind: "If anyone, after knowledge of the present prohibition, invades the goods of bishops, priests, or other clerics, let him be excommunicated until satisfaction. § 1. But let the goods of bishops who are dying be dispensed through the hands of archpriests or archdeacons, either in alms for their salvation according to the judgment of the dead, or be reserved for the successor who is to come. Let the very same thing be done concerning the goods of priests or other clerics through the bishop or the aforesaid persons, or through those to whom the dying persons have committed them. But if anyone has presumed against these things, let him be anathema."

C. XLVII. Concerning the same.

Likewise Innocent II, [in the Lateran Council, c. 4]. We command that what was established in the holy Council of Chalcedon be preserved irrefragably: namely, that the goods of deceased bishops be plundered by absolutely no man, but remain under the free power of the steward and clerics for the use of the church and of his successor. But if anyone from now on has presumed to attempt this, let him be subject to excommunication. Those who seize the goods of dying priests or clerics shall be subjected to a similar sentence. GRATIAN. This is to be understood not only concerning laymen, but also concerning metropolitans and any other clerics, as is read in the Sixth Synod, [c. 35]:

C. XLVIII. A metropolitan is not permitted to invade the goods of a dying bishop.

No metropolitan is permitted, when a bishop who is under him dies, to take away either his goods or the goods of his church; rather, let them be under the custody of the clergy of the deceased bishop's church until another bishop is ordained. But if there are no clerics in the church, then let the metropolitan return all things unimpaired to the bishop who will be ordained there. GRATIAN. Just as no one is permitted to usurp the goods of the church, so the church is not permitted to invade the goods of others. Hence Gregory, [book II, letter 43, to Bishop Boniface]:

C. XLIX. The church is not permitted to invade the goods of others.

Just as the church ought not to lose its own goods, so it ought not to invade those of others with the ardor of rapacity. GRATIAN. By all these authorities it is clearly shown that no priest is permitted to deliver ecclesiastical goods to anyone and that one who has received the resources of the church from a priest's hand will be able to claim them under no right. Rather, he will be compelled to restore what he received unlawfully. § 1. But it must be noted that, when certain causes require it, the goods of the church can be alienated. For because of necessity, with the counsel of the clerics, or so that they may provide better things, the goods of the church can be alienated by priests. Hence it is read in the African Council:

C. L. Unless there is a cause of necessity, not even a bishop is permitted to usurp property of the church.

Not even a bishop who has no necessity is permitted to usurp for his title property of the mother church.

C. LI. Neither may priests sell property of the church while the bishops are ignorant, nor bishops while the council is ignorant.

Likewise from the Council of Carthage, [sole council, final c.]. It was resolved that priests shall not sell property of the church where they are established without their bishops knowing, just as bishops are not permitted to sell estates of the church, without any necessity, unless the council or the whole presbyterate has been consulted.

C. LII. A bishop is not permitted to alienate property of the church unless he provides better things.

Likewise from the letter of Pope Leo to all the Bishops established throughout Sicily. We decree without exception that no bishop shall dare to give, exchange, or sell anything from the goods of his church, unless perhaps he does one of these things so that he may provide better things and, with the deliberation and consent of the whole clergy, chooses that which is undoubtedly going to benefit the church. And below: § 1. Let the bishop use the goods of the church as things entrusted to him, not as his own. For a sale or exchange of ecclesiastical property by bishops will be void without the connivance and subscription of the clerics. GRATIAN. Likewise, rulers of churches are permitted to sell or exchange houses in cities or fortified towns which bring more disadvantage than utility to the church, as is contained in the preceding chapter of Symmachus, "The pope is not permitted, etc." Likewise, as is read in the Council of Agde, [c. 45]:

[C. LIII.]

PART VI. "The bishop shall have power, without the counsel of the brothers if there is necessity, to alienate small plots of land or little vineyards which are less useful to the church, or small ones situated far away." [GRATIAN.] Bishops are likewise permitted to alienate fugitive servants who cannot be retained when recalled. Hence it is read in the same Council, [c. 46]:

C. LIV. Let fugitives who cannot be held be alienated.

Fugitives abandoning their houses or households who cannot be held even if they are recalled may for the same reason be alienated by bishops, if they wish or if those persons have so deserved.

[PALEA.

C. LV. Likewise from the Council at Trosly, c. 2.

It appears unjust and impious that bondservants whom faithful men or women have consecrated to God and His saints for the redemption of their soul should be reduced again to secular servitude for the price of any gift or through the transaction of an exchange, since canonical authority permits only fugitive servants to be alienated. And therefore let all rulers of churches take the greatest care lest the alms of one become the sin of another; and it is absurd that a servant departing from ecclesiastical dignity should be subject to human servitude.] PART VII. GRATIAN. Likewise, if rulers of a church

wish to restore to the church the same amount from their own goods, they can freely give ecclesiastical resources, and they will remain for those to whom they were given with perpetual validity. Hence it is read in the Council of Agde, [c. 49]:

C. LVI. How an alienation from the goods of the church will be able to be valid.

If anyone under any condition has presumed to alienate something from the goods of the church, if he has conferred upon the church from his own property as much as he is seen to have taken away, then at last this will be permitted to stand. PART VIII. GRATIAN. Likewise, if a bishop grants servants of the church to liberty, the things which had been given to them at manumission will possess perpetual validity, provided, nevertheless, that the things given did not exceed the quantity fixed by the canons. Hence it is read in the same Council, [c. 7]:

C. LVII. Concerning the same.

If a bishop has granted to liberty any servants of the church who have deserved well from him, it was resolved that the freedom conferred be preserved by his successors together with that which the manumitter had conferred upon them in freedom. Nevertheless, we command that this keep the number and measure of twenty solidi in a small plot of land, little vineyard, or small dwelling. But what has been given beyond this shall be recalled to the church after the manumitter's death. GRATIAN. But it must be noted that servants of churches cannot be manumitted without ecclesiastical patronage being retained, unless perhaps the manumitter wishes to confer upon the church two persons of the same merit and the same personal property. Hence it is read in the Fourth Council of Toledo, [c. 86]:

C. LVIII. Concerning a bishop who manumits servants of the church without retaining patronage.

A bishop who desires that a bondservant under the right of the church be manumitted without ecclesiastical patronage being retained shall offer before the council, by exchange, two persons of the same merit and personal property to the church over which he presides, with the priests subscribing, so that the determination of the one making the exchange may be found valid and just. For then he will be able to grant free manumission without the patronage of the church, because he has now acquired under his own right the person whom he determined to deliver to liberty. § 1. But let permission to accuse or testify against the church under whose right he existed be denied to a freedman of this kind. But if he has presumed to do so, it is resolved that, while the exchange remains in force, he be recalled into servitude of his own church, which he endeavors to harm. GRATIAN. For a freedman is not permitted to summon his patron into court unless permission has been obtained. Hence in book II of the *Digest*, under the title *On Summoning into Court*, [final law]: "If a freedman has summoned his patron into court without obtaining the edict's permission, upon the complaint of the patron he either pays the aforesaid penalty, that is, fifty aurei, or is chastised by the prefect of the city as undutiful, if he is known to labor under poverty." § 1. But if anyone has been manumitted by a college, he owes reverence not to the individuals but to the corporate body. Hence in the same book, under the same title, [law *But If in This*]: "One who is manumitted by any corporate body, college, or city will summon individuals into court. For he is not their freedman, but he ought to hold the commonwealth in honor. And if he wishes to proceed against the commonwealth or

corporate body, he ought to seek the edict's permission, although he is going to summon their appointed representative into court." § 2. But if the prince makes him freeborn, he does not owe reverence to the patron. § 3. But in a criminal matter, if he has summoned his patron into court intending to seek his life and fortunes, he is to be punished capitally before the beginning of the suit. The crime of treason is excepted, or if he discovers his patroness engaging in unlawful intercourse with a servant, in which case even the servant is permitted to accuse his mistress with the reward of liberty, just as in book IX of the *Code*, under the title *Concerning Women Who Have Relations with Their Own Servants*, [sole law], Emperor Constantine is read to have established: "If any woman is discovered secretly to have relations with her own servant, let her be subjected to capital sentence, the scoundrel being handed over to the flames. And let there be opportunity for all to prosecute the public crime, let there be opportunity for the office to report it, and let there also be permission for the servant to denounce it; when the crime has been proved, liberty will be given to him." § 4. They also cannot testify against patrons except in certain cases in which even servants are commanded to be tortured against their masters. Hence in the book of the *Code*, under the title *Concerning Tortures*, [first law], Emperor Antoninus:

[C. LIX.]

"Judicial torture of servants against their masters ought not to be held, except in accusations of crimes of adultery, likewise of a defrauded census, and of the crime of treason which pertains to the safety of the prince. § 1. But in other matters, although the things which a servant said against his master ought not to form the sentence of those who will judge, nevertheless, if the credibility of truth is investigated through other proofs also, the prejudice of the objection vanishes. § 2. But in pecuniary cases it is manifest that servants cannot be interrogated against their master even through a lack of proofs."

[C. LX.]

The same. "It is unusual and grave as a precedent that servants be heard against the guardians or mother of their masters, unless an action concerning the guardianship is brought." [GRATIAN.] But if a freedman has departed from the patronage of the church by his own authority, if after being admonished he has disdained to return, he will be recalled into servitude. Hence it is read in the same Council:

C. LXI. Concerning freedmen of the church who depart from its patronage.

Freedmen of the church who, departing from its patronage, adhere to any persons whatsoever: if after being admonished they have disdained to return, let their manumission be void, because through contempt of disobedience they are held by an action for ingratitude.

C. LXII. Let freedmen who grow proud against churches be recalled into their servitude.

Likewise from the Second Council of Seville, [c. 8]. An eighth discussion was held concerning a certain Elisep from the household of the church of Cabra, who, having been delivered to liberty by his bishop, immediately leapt from liberty into the disease of contumacy and thus through pride not only wished to harm the safety of the same bishop by evil or treacherous arts, but, forgetful of his

freedom, even condemned beforehand the church his patroness. Against him an action for ingratitude is justly directed by authority of the canons and laws, namely, that, punished by the loss of undeserved liberty, he be forcibly recalled to the bond of servitude. For it is fitting that the status of such persons who strive against their bishop or the church their patroness be cut down rather than preserved, so that those whose liberty is pernicious may have a salutary servitude, and those who learned to grow proud when liberty had been obtained may, once exposed, learn to obey in subjection.

C. LXIII. Let freedmen promoted to sacred orders not depart from the patronage of the church.

Likewise from the Third Council of Toledo, [c. 6]. Concerning freedmen, however, the holy synod commanded this: that if any have been made priests or deacons by bishops according to the manner in which the ancient canons give permission, let them be free, and nevertheless let neither they nor those begotten by them depart from the patronage of the church. § 1. Let those delivered to liberty by others and commended to churches also be gathered under the bishop's patronage, and let the bishop request from the prince that they not be given to anyone. GRATIAN. But lest the condition of their origin be obscured by length of time, at the time of their manumission let freedmen write a profession in which they profess that they are from the household of the church and that they will never depart from its service. Hence it is read in the same Council:

C. LXIV. Let freedmen of the church make a profession of their condition.

It often happens through length of time that the condition of origin is not manifest. Hence it was already decreed in an earlier canon of the universal council that freedmen of the church ought to make their profession, in which they profess both that they are from the household of the church and that they will never relinquish its service. Hence we also add this for them: that whenever a priest has completed the course of life and migrated from this life, as soon as his successor has arrived, all freedmen of the church, or those begotten by them, ought publicly to present their charters to the pontiff who is substituted, in the sight of all, and renew their profession in the sight of the church, so that both they may retain the force of their status and the church may not lack their obedience. But if within a year of the new pontiff's ordination they have disdained to manifest the writings of their liberty or have been unwilling to renew their professions, let those charters remain void and empty, and let them, returned to their origin, be servants in perpetuity.

C. LXV. Let neither freedmen nor their posterity depart from the patronage of the church.

Likewise from the same. Because the patroness of freedmen of the church never dies, let them never depart from the patronage of the church, nor indeed their posterity, as the preceding canons decreed. And lest perhaps their liberty not be manifest in future offspring and that posterity withdraw itself from the church's patronage, it is necessary that both those freedmen themselves and those begotten by them make a profession to their bishop through which they acknowledge that they were made freedmen from the household of the church and do not relinquish its patronage, but furnish it service or obedience according to their ability. GRATIAN. Ecclesiastical goods can also be usefully given as recompense for service rendered. Hence it is read in the Fourth Council of Toledo, [c. 36]:

C. LXVI. Things furnished from the goods of the church as recompense for service will remain valid.

Whoever, by anyone's support, has provided something of ecclesiastical utility, and in return they have promised him any advantage as recompense, the payment of what was promised ought to release them, in such a way that it is referred to the council of the province, so that it may be confirmed by their assembly, because, as Paul says, the laborer is worthy of his wages.

C. LXVII. Servants of churches can be transferred into the dominion of those who serve ecclesiastical utilities.

Likewise Gregory, [book II, indiction 11, letter 18, to Theodore the Counselor]. It is fitting that those who labor for ecclesiastical utilities rejoice in ecclesiastical recompense, so that those who willingly subject themselves to the voluntary necessities of services may worthily be consoled by our provisions. Therefore, because we have learned that Theodore, a most eloquent man and our counselor, is destitute of the ministry of bondservants, we command that a boy named Acosimus, a Sicilian by nation, be given and delivered to his right and dominion. Because he now possesses the boy delivered by our will, it was necessary that this gift be fortified by authority as testimony and confirmation for the future, so that, with the Lord protecting, he may securely be able always to possess him as master without suspicion of anyone's reconsideration. GRATIAN. Servants of churches can also be granted to liberty in consideration of mercy. Hence Gregory to Montana and Thomas, [book V, letter 12]:

C. LXVIII. In consideration of mercy and piety servants of churches can be manumitted.

Since our Redeemer, the Creator of every creature, being propitiated wished to assume human flesh for this purpose—that, after the bond of servitude by which we were held captive had been broken by the grace of His divinity, He might restore us to our original liberty—it is salutarily done if men whom nature brought forth free from the beginning and the law of nations subjected to the yoke of servitude are restored by the benefit of the manumitter to that liberty in which they had been born. And therefore, moved by consideration of piety and reflection upon this matter, we make you, Montana and Thomas, servants of the holy Roman Church which by God as author we serve, free persons and Roman citizens from this day, and we remit to you all your servile peculium. § 1. We dictated that this page of manumission be written by Paterius the notary and, for the fullest validity, subscribed it with our own hand together with three leading priests and three deacons, and we delivered it to you. Enacted in the city of Rome. GRATIAN. Likewise, servants of churches ought not to be wearied by public compulsory services. Hence it is read in the Third Council of Toledo, [c. 21]:

C. LXIX. Let servants of churches not be wearied by public compulsory services.

We grieve that servants of churches and of bishops or of all clerics are wearied by judges or public officers in various compulsory services. On account of this the whole council requested from the piety of our most glorious lord that he prohibit such practices hereafter, but that the servants of the aforesaid offices labor for their uses or those of the church. But if any judge or public officer has wished to occupy a cleric or the servant of a cleric or church in public and private business, let him be

made a stranger to the ecclesiastical communion which he impedes. GRATIAN. Likewise, for the sustenance of the poor and the redemption of captives, sacred goods may be alienated.

Hence Ambrose says in book [II] *On Duties*, [c. 28]:

C. LXX. For what causes sacred goods ought to be alienated.

The church possesses gold not so that it may preserve it, but so that it may expend it and give aid in necessities. What need is there to guard what helps nothing? Do we not know how much gold and silver the Assyrians took from the temple of the Lord? Is it not better that a priest melt it down for the sustenance of the poor if other subsidies are lacking, than that a sacrilegious enemy contaminate and carry it away? Will the Lord not say: Why did you allow so many needy persons to die of hunger? And surely you possessed gold; you should have supplied sustenance. Why were so many captives led into commerce and, not redeemed, killed by the enemy? It would have been better that you preserve vessels of living beings than vessels of metals. No answer could be returned to these things. For what would you say? I feared lest ornament be lacking to the temple of God? He answers: The sacraments do not seek gold, nor are things which are not bought with gold pleasing because of gold. The redemption of captives is the ornament of sacred things, and those are truly precious vessels which redeem souls from death. That is the true treasure of the Lord which works what His blood worked. And a little later: § 1. No one can say: Why does a poor man live? No one can complain because captives have been redeemed. No one can accuse because a temple of God has been built. No one can be indignant because spaces have been enlarged for burying the remains of the faithful. No one can grieve because the rest of the dead is in the tombs of Christians. In these three kinds of cases it is permitted even to break, melt down, and sell the consecrated vessels of the church. It is necessary that the form of the mystical people not depart from the church, nor that the ministry of the sacred chalice be transferred to nefarious uses. Therefore vessels within the church which were not consecrated were sought first, then broken into pieces, and finally melted down; distributed to the needy through small expenditures, they also availed for the prices of captives. But if new vessels and those which appear by no means to have been consecrated are lacking, I judge that all things can piously be converted to uses of this kind which I stated above.

C. LXXI. The glory of a bishop is not to adorn the walls of a temple, but to provide for the poor.

Likewise Jerome, [to Nepotian *On the Life of Clerics*]. The glory of a bishop is to provide for the resources of the poor; the ignominy of a priest is to devote himself to his own riches. Born in a poor house and in a rustic hut, I who could scarcely satisfy my rumbling stomach with millet and coarse bread now disdain fine flour and honey. From the same: § 1. Many build walls and remove the columns of the church; marbles gleam, ceilings shine with gold, the altar is distinguished with gems, and there is no selection of Christ's ministers. Nor indeed let anyone object to me the rich temple in Judea, the table, lamps, censers, dishes, cups, mortars, and the other things wrought from gold.

These things were then approved by the Lord when priests sacrificed victims and the blood of cattle was the remission of sins, although all these things preceded as a figure; but they were written on account of us, upon whom the ends of the ages have come. But now, since the poor Lord has dedicated the poverty of His house, let us bear the cross and reckon delights as mud. From the same: § 2. To seize something from a friend is theft; to defraud the church is sacrilege. To have received

something to be distributed to the poor and, when very many are hungry, to preserve it is either cautious or fearful; or, what belongs to most manifest crime, to withdraw something from it exceeds the cruelty of all robbers. Likewise from the same, [to Paulinus, *On the Institution of a Monk*]: § 3. That Crates of Thebes, once a most wealthy man, when he proceeded to Athens to philosophize, cast away a great weight of gold and did not think that he could possess virtues and riches at the same time. We, laden with gold, follow the poor Christ and, brooding over our former resources under the pretext of alms, how can we faithfully distribute the goods of others when we fearfully preserve our own? A full belly readily discusses fasts. It is not having been at Jerusalem, but having lived well at Jerusalem, that is praiseworthy. GRATIAN. Likewise, by the bishop's generosity it is also permitted to give clerics a stipend from the goods of the church, a profession of which ought to be made under the name of a grant at will. Hence it is read in the Seventh Council of Toledo:

C. LXXII. Let one who has received a benefice from the church make a profession concerning it under the name of a grant at will.

It often happens that length of time opposes original ownership. Therefore, providing against this, we decree that if any cleric receives a stipend from the goods of the church by the generosity of any bishop, he ought to write a profession under the name of a grant at will, lest through lengthy retention he bring prejudice upon the church; and he ought usefully to work whatever he has received for use, so that neither may goods under divine right appear to be neglected on any occasion, and clerics may be able to receive support from the church which they serve. But if any of them has disdained to do this, he will be seen to deprive himself of his stipend. GRATIAN. In consideration of religion, those things in which the church suffers no detriment can also be delivered to monasteries. Hence it is read in the First Council of Toledo, [c. 4]:

C. LXXIII. It is permitted to alienate goods of the church in consideration of religion.

If a bishop wishes to dedicate one of his parish churches as a monastery so that a congregation of monks may live regularly in it, let him have permission to do this with the consent of his council. And if he has given to the same place from the goods of the church for their substance something which presents no detriment to the church, let it be stable. For the holy council gives consent for establishing a good thing.

C. LXXIV. A bishop is not permitted to confer upon a monastery which he constructs more than a fiftieth part of the goods of the church.

Likewise in the Tenth Council of Toledo, [c. 5]. To give counsel for a good thing is both held to be a support of the present life and seen to await the reward of eternal recompense. Therefore, whichever of the bishops should perhaps wish to establish a monastery in his parish and decree to enrich it from the goods of the church over which he presides ought to give no more than a fiftieth part there, so that, with this equity of moderation preserved, he may both confer fitting support upon that to which he gives and not inflict grave losses upon that from which he takes. But upon a church which will not be formed by monastic rules, or which he wishes to enlarge for his own burials, it will be permitted to confer there no more than a hundredth part of the revenue of the church over which he presides, with this caution nevertheless preserved: that he assume only one of these two recompenses, whichever has pleased him.

C. LXXV. It is permitted to deliver goods of the church by right of ownership for the buildings of monasteries.

Likewise Gregory, [book II, indiction 11, letter 17, to Gratiosus the Subdeacon]. It is fitting that we provide with appropriate consideration for those choosing the religious life, lest the occasion of some necessity either make them idle or, which God forbid, break the strength of their manner of life. Therefore by the present authority we command you to deliver to the same woman, undoubtedly to be possessed by right of ownership, the house situated in this city in the fourth region beside the place which is called White Hens, or the garden under the right of the holy Roman Church over which, by God as author, we preside, in which Campana, formerly of Patricius, is known to have dwelt, together with the garden and the lodgings which the gate enclosed within the same house, so that in that house, with Christ assisting, she may construct a monastery where she can dwell with her congregation, and so that both she herself and the woman who shall succeed in her honor and place may be able to possess with quiet and unshaken right the aforesaid house and garden with all things pertaining to them, granted by us, as we have said, in consideration of piety. GRATIAN. Behold, it has been shown how the goods of the church can be given without fault and remain valid for those to whom they were given.

Question III

GRATIAN. PART I. It is now asked: if before the time of their ordination they appeared to possess nothing, what ought to be done concerning the things which they are known to have acquired after their ordination? Concerning these things it was established thus in the Third Council of Carthage, [c. 49]:

C. I. Concerning those who, possessing nothing at first, acquire something during the time of their administration.

It was resolved that bishops, priests, deacons, or any clerics who are ordained while possessing nothing and during the time of their episcopate or clericate purchase fields or any estates in their own name shall be held as though by the crime of invasion of the Lord's goods, unless after being admonished they confer those same things upon the church. But if something has come to them personally through someone's liberality or succession by kinship, let them do with it what accords with their purpose. But if they have strayed backward from their purpose, let them be judged unworthy of ecclesiastical honor as reprobates.

C. II. Concerning ministers who acquire something for their own utility and through no occasion belonging to the church.

Likewise from the Eleventh Council of Toledo. Whatever any of the priests or ministers have merited to receive from anyone in any manner, or through the sequence of a document, for their own utility and friendship, cannot be numbered among the goods of the church; rather, what they wish to do with it will be subject to the judgment of their own will. But if this should perhaps remain unordered after their death, the church over which he presided or of which he was a minister will claim it for itself in perpetuity. GRATIAN. Behold, he can give to whomever he wishes those things which he gained not from ecclesiastical office but from some furnishing of his own utility. PART II. § 1. But it is asked concerning those things which are offered to him jointly with the church or separately for

the remedy of a soul, or concerning the third part which he receives as owed to him from the goods of parish churches, whether he can leave them to whomever he wishes. Concerning these matters it is determined thus in the Council of Agde, [c. 6]:

C. III. Concerning pontiffs to whom something is left or given by outsiders, either together with the church or separately.

Pontiffs to whom, while they are established in the highest priesthood, something is left or given by outsiders either together with the church or separately—because the person who gives it is proved to offer it for the redemption of his soul, not for the advantage of the priest—shall reckon it among the resources of the church, not as their own property but as something left to the church, because it is just that, just as the priest possesses what is left to the church, so the church also possesses what is left to the priest. § 1. Certainly, whatever is perhaps left through a trust either to the priest or to the church, afterward to benefit any other person, the church will not be able to reckon or retain among its own resources.

C. IV. A bishop will be able to leave to the church the third part owed to him.

Likewise from the Ninth Council of Toledo, [c. 6]. If a bishop has decreed to confer the third part which he knows to be owed to him from the goods of parish churches upon the church whose property it will be manifestly shown to be, or upon another church, let it remain lawful, and let his sentence possess irrevocable force.

Question IV

GRATIAN. But as to what is asked—if they are known to have acquired something from their own goods and those of the church, to whom do those things come?—it is determined thus in the same Council.

C. I. Concerning those who are known to have acquired something from their own goods and those of the church.

Let priests, or any persons to whom care of ecclesiastical goods is committed, concerning whatever they have purchased during the time of their administration, if they possessed anything cheap or costly from their own goods, take care to execute the instruments of the charters in the name of the church over which they preside; for it is not just that the church should make wealthy in another's goods one whom it received as an outsider and retain him as a defrauder in its own. § 1. But those who are known to possess an income from their own property: concerning every property which they are seen to have acquired after the day of their ordination, whether no instruments or some have been executed, after an accounting has been made of both their own right and the ecclesiastical goods, if the quantity of each property is equal, the acquisition will pertain by equal right to the church and to the heirs of the deceased. GRATIAN. But if anyone has inflicted detriment upon the goods of the church for the advantage of his own property, or if on account of ecclesiastical goods he has suffered detriment in his own property, in turn the goods which experience the gain shall make reparation to those suffering the losses. Hence it is read in the Third Council of Braga, [c. 8]:

C. II. Let losses which either a priest or the church has experienced on account of the other be repaired.

Whoever through this neglect has allowed divine goods to suffer is to be constrained by a special decree, so that if from the goods or increases of the church he has increased his own gain by his labors and from this has either exhibited neglect of labor toward ecclesiastical goods or introduced diminution or loss, he shall restore to it whatever he diminished in the goods of the church, from whose goods and supports he has been convicted of enlarging his own labors. But if he expended anything for the utilities or substance of the church, or sustained anything of expense or loss, if he can prove this, all of it will be restored to him from the goods of the same church, for whose utility he is proved to have expended it. GRATIAN. But if they are known to have acquired something only from the goods of the church, they both ought to draw up the instruments in the name of the church and will not be able to give those things to anyone. Hence it is read in the Council of Agde, [c. 54]:

C. III. Concerning the things which priests purchase, let them make the document in the name of the church.

When a priest holds a diocese, let him make the document concerning the things which he purchases in the name of the church, or let him depart from the governance of the church which he holds.

Question V

GRATIAN. PART I. They are not permitted to make testaments except concerning their own goods. Hence Gregory writes to Bishop Lucidus, [book X, letter 42]:

C. I. How priests may make a testament concerning the goods of the church.

It is doubtful to no one that, just as priests have no permission to alienate goods acquired in the episcopate, so they are not prohibited from judging whatever they wish concerning those which they possessed before. And so we recall that your fraternity, at the time when it was with us, complained that your predecessor Constantius had left to Luminosa, a handmaid of God, and to his brothers, by the sequence of a testament under the title of a legacy, certain movable goods which he had acquired while already a bishop; and we decreed that, if this is established, your church should suffer no prejudice from them. You too ought to recall this, not cause any vexation to the aforesaid handmaid of God, nor take anything from her without an inquiry concerning the things which she possesses.

C. II. Concerning the same.

The same, [book IV, letter 22, to Cyprian the Deacon]. We believe that your affection has already learned of the death of Bishop Theodore. But because he is said to have made a testament, you ought to inquire carefully whether he consumed anything from the goods of his church. And if indeed you learn that he diminished anything from them improperly, act in such a way that the goods are by every means repaired by the person whose interest it is.

C. III. Things conferred upon monasteries by a bishop ought not to be recalled.

Likewise Gregory to Marinianus, Bishop of Ravenna, [book V, letter 1]. Because John, your former predecessor, very often requested of us that we ought by our authority to confirm those things which he had conferred upon that monastery which he himself had constructed beside the church of Saint Apollinaris, and we promised that we would do this, we foresaw that it was necessary to exhort your fraternity that it permit nothing from the things which he conferred and established there to be diminished in any manner, but endeavor that all things be preserved with firm stability. Because he is known to have made mention of this monastery and the goods collected there in the testament which he made, you ought to know that we confirmed these things not because we follow his last will, but because we promised this to him while he was living, as we have said. Therefore let your fraternity hasten solicitously to fulfill all these things in such a way that both the things which he established in the aforesaid monastery and which were confirmed by us are preserved, and those things which he decreed by his testament to be given or done to the detriment of his church obtain no validity, since the law prohibits it.

C. IV. Let a bishop leave to whomever he wishes the things which he acquired before his ordination or afterward by hereditary succession.

Likewise from the Council of Seville. We have decreed that it be fixed henceforth and remain perpetually that a bishop may confer upon whom he wishes the goods under his own right which he acquired either before the episcopate or indeed during the episcopate by hereditary succession, according to canonical authority, and do with them whatever he wishes. But after he has been made bishop, whatever goods he has purchased from the resources of the church either in his own or another's name, we have decreed that they come under the rights not of his relatives but of the church over which he presides. GRATIAN. But a bishop is permitted to make a testament concerning ecclesiastical goods if he restores as much from his own. Hence it was established in the Council of Agde, [c. 51]:

C. V. How those things which are bequeathed by testament from the property of the church can be valid.

If a bishop, having made a testament, bequeaths anything from property belonging to ecclesiastical right, it shall not be valid otherwise, unless he supplies as much from resources belonging to his own right. PART II. GRATIAN. But if a bishop or anyone from an ecclesiastical rank dies intestate, and no persons are found who succeed him by right of kinship, let the church succeed him in the whole, nor shall it be lawful for anyone to presume anything from his goods.

Hence it was established in the Council of Tarragona [c. 12]:

C. VI. Let the church succeed in full to an intestate bishop.

Wherever a bishop has died intestate, after this determination let a written inventory of his goods be made by his priests and deacons, from the least to the greatest—that is, of utensils and all household furnishings—yet in such a way that, if anyone is convicted either of having presumed anything from them or of having taken anything secretly, he shall restore everything according to the tenor of theft.

C. VII. Concerning the same.

Likewise from the Council of Tribur. Whoever from an ecclesiastical rank dies without a testament and without kindred, let his inheritance devolve upon the church where he served. Likewise concerning nuns.

Causa XIII

GRATIAN. Certain parishioners of a baptismal church, oppressed by the calamities of wars and compelled by fear of the enemy, transferred their domiciles into another diocese, yet they did not cease to cultivate their old estates; they began to pay tithes to that church into whose diocese they passed, and they chose their places of burial at it. After fifty years had elapsed, the clerics to whom they had formerly paid tithes began to raise a question against those who receive first fruits and tithes from these persons; they come to trial. (QUESTION I.) First it is asked whether those whose domiciles are in the diocese of this baptismal church ought to pay tithes and celebrate their obsequies at that church in which these things were formerly done by their parents. (QUESTION II.) Second, whether the right of receiving tithes and conducting funerals is removed by prescription of time.

Question I

GRATIAN. PART I. That all these things are by right to be paid to the former church, the plaintiffs strive to prove by these arguments. It is established that every baptismal church has a diocese lawfully assigned to it, just as parochial churches also have parishes apportioned to them. Hence Dionysius the Bishop to Bishop Severus, [letter II]:

C. I. Individual priests ought to have their own churches.

We have given individual churches to individual priests; we have divided parishes and cemeteries among them, and we have established that each is to have his own right, in such a way, namely, that no one invade the boundaries or right of another's parish, but let each be content with his own boundaries and so guard the church and people committed to him that before the tribunal of the eternal Judge he may render an account for all things committed to him and receive not judgment but glory for his deeds. GRATIAN. Moreover, from whatever estates are cultivated in the designated diocese, the revenue of the tithes assigned to the baptismal church ought to be paid. Therefore, because these estates are contained within the boundaries of our diocese, the revenue of the tithes lawfully assigned to us is to be paid to our church. PART II. § 1. To these matters reply is thus made: Tithes were established by God through Moses so that they might be paid by the people to the sons of Levi for the ministry in which they served Him in the tabernacle. The sons of Levi did not receive tithes except from those for whom they offered prayers and sacrifices. Therefore, because we serve the Lord in the tabernacle by offering prayers and sacrifices for these persons, they also ought to pay us tithes and first fruits. § 2. Likewise, when tithes were given to the sons of Levi, they were not paid according to the choice of the offerer, so that, after despising the Levite who was with him, he might himself choose to whom he wished to give the tithes. For it was said: “The Levite who sojourns with you and dwells within the walls of your city shall eat them.” For that reason also they received cities for habitation from each of the tribes, so that each tribe might pay tithes to those who were with it.

For Moses commanded the children of Israel, as is read in Deuteronomy: "In the place which the Lord your God shall choose, that His name may be therein, thither you shall bring all the things that I command: holocausts and sacrifices and tithes and first fruits of your hands, and whatever is foremost among the gifts which you have vowed to the Lord. There you shall feast before the Lord your God, you and your sons and your daughters, your menservants and maidservants, and the Levites who sojourn in your cities. For he has no other part and possession among you." And below: § 3. "The tithe of grain and wine and oil, the firstborn of herds and flocks, and all things that you shall vow and wish to offer spontaneously, and the first fruits of your hands, you shall eat before the Lord your God in the place which the Lord your God shall choose—you and your son and your daughter, your manservant and maidservant, and the Levites who remain in your cities." § 4. Therefore, because we reside within the walls of the city of these persons and are joined to them by habitation, we rightly receive tithes from them. Likewise the Prophet says: "Bringing forth hay for beasts of burden, and grass for the service of men." Hay and grass are brought forth from the earth—but for whom? For the beasts of burden that water it, for the men who cultivate it and in this serve Him. Likewise the Apostle: "But let him who is catechized in the word communicate with him who catechizes him." This he says to the Galatians. But to the Corinthians he proves that support is specially owed to him because he ministered spiritual things to them, saying: "If we have sown spiritual things for you, is it a great thing if we reap your carnal things?" Likewise: "If others have become sharers in your power, why not we rather?" Likewise: "Who plants a vineyard and does not eat of its fruit?" We planted the vineyard, and do you wish to eat its fruits? Likewise the Lord commanded Moses that no one put his sickle into another's harvest. This harvest is ours, and do you wish to put your sickle into it? Likewise: "You shall not bind the mouth of the ox that treads out the grain." We are the oxen treading out the grain; do you seek to bind our mouth and seek sustenance for yourselves from our threshing? Likewise the Apostle: "Let those who serve the altar live from the altar." But surely not from that altar which they do not serve? Likewise: "Those who work in the sanctuary share with the sanctuary." But surely not with that in which they do not work? We serve the altar; do you wish to share in it, while seeking to dismiss us empty and destitute? Likewise the Apostle: "It is fitting that the laboring husbandman first partake of his fruits"; but do you seek the contrary? We are the laboring husbandmen; do you wish first to partake of our fruits? Indeed, not first, because you do not wish to leave even the last portion to us. For, beginning from the first things, you creep forward little by little and strive to usurp the whole, so that it may appear to have been said of you: "Bit by bit the wolf eats the lamb." Likewise: "Who ever serves as a soldier at his own expense? Who feeds a flock and does not eat of its milk?" We serve as soldiers, and do you seek for yourselves the stipends of our military service? We feed the flock, and do you wish to receive its milk and wool for yourselves? It is wisdom to seek sustenance from another's labor—if it is wisdom to will what you cannot obtain. § 5. Likewise the Lord said to His disciples: "Into whatever house you enter, remain in that same house, eating and drinking the things that are among them. But when you enter, first say: Peace to this house." We entered this house; we offered peace to it. But do you rejoice to be fed as idle men by another's food? See lest this be turned against you: "See what idleness and another's food may do." § 6. Likewise the Prophet: "Take up a psalm and give the timbrel." These persons take up the psalm from us, and do you seek the timbrel from them? § 7. Likewise Leo IV: "Concerning tithes, not only to us but also to our predecessors it seemed by a just order that they ought to be given only to parish churches where the most sacred baptisms are administered." § 8. But

to which parish churches are they owed: to those from which they receive baptism, or to others? We baptize them, and do you take tithes from them? It is an honorable interpretation; would that you might find those who interpret thus for you. Therefore, because we water this people, ministering to it the rain of doctrine, and because we cultivate it with the ploughshare of preaching, opening its hearts to the faith, if you are unwilling to permit it, at least suffer it to bear fruit for us, and beware of inflicting upon us such things as you do not wish to be done to you, lest, if you persist in saying what you wish, you hear what you do not wish.

PART III. § 9. To these arguments: With a crafty and indeed manifold argumentation you strive to take away our rights, in such a way that, if credence were given to words, you would carry back not words for words but things for words. But, God being favorable, if you have given words, you will receive words. § 10. You charge us with seeking to steal away those things which are owed to you, because we pursue our own things. A judgment indeed wise and uttered by a philosophical mouth: is pursuing one's own to plunder another's? From where has this judgment flowed to you, unless because you covet our things with such ardor that you think your own things are taken away from you when we obtain ours? Hence, when our case has attained its due end, you will exclaim: "Ah, wretched me, I am tortured that so great a morsel has been snatched from my jaws." But see lest you seek to obtain compensation for the loss of the ointment poured out. You have appointed yourselves planters of vineyards, diggers of fields, threshers of threshing floors, waterers of fields; you have assumed for yourselves many other offices of this kind and have complained that services owed to you are withdrawn from you by us. But we do not deny what is yours. Straw and coverings are preserved for the ox that treads out grain. Let these be yours, and leave the kernels to us. Cultivators of vineyards, diggers of fields, and waterers of fields, once they have received a daily wage, leave the fruits that arise to the owners. Therefore, having received the recompense for your work in the daily offerings and the other services which are daily brought in return for the spiritual things they receive from you, leave to us the resulting fruits of tithes and first fruits. § 11. Likewise the Lord commanded His disciples to eat and drink the things that were among their hearers, but He did not command them to cast the owners out of their houses and despoil them of their goods. You will not easily find those who willingly receive such guests. A mouse in a purse, fire in the bosom, a serpent in the lap reward their hosts badly. Hence it is said in Proverbs: "He who nourishes a serpent in his bosom will be struck by it." May you find such hosts for yourselves as you wish to be for us. It is not enough for you to eat and drink the things that are in our house while you receive the daily fruits of offerings, from which you may have food and clothing, with which you ought to be content with the Apostle; but you are unwilling, because you are not imitators of him. Rather, you strive to expel us from our house and wholly despoil us of our goods when you do not wish to leave us even the tithes of these things. § 12. But in order that all things may be gathered universally, we refer everything that has been introduced on your behalf—whether concerning the laboring husbandman or concerning him who does not serve as a soldier at his own expense—to this point: that you receive in the offerings and daily services of these persons the fruit of your work which you so greatly strive to receive, but leave untouched to us their tithes, which are owed to us, lest, while you seek to usurp what is not yours, by just punishment you be compelled also to lose that which seemed in some manner to belong to you. § 13. But that these tithes are owed to you by no right, we shall easily prove. For it is said in a certain council: "If any layman or cleric, or a person of either sex, the places of his property, etc.," as they are found noted in the same chapter in the cause concerning monks. Therefore, if a

layman or cleric or any person, when selling or donating places belonging to his property, can in no way withdraw the revenue of the tithes from the church to which it was lawfully assigned, neither can these persons, by passing from diocese to diocese, take away from us the tithes of their estates which are contained within the boundaries of our parish. For, so far as the right of receiving tithes is concerned, it is the same thing for the possessor to pass from diocese to diocese as for the possession to be transferred from one diocesan to another.

Question II

GRATIAN. PART I. To these arguments: Even if these tithes were owed to you by right, as you assert, nevertheless an objection of thirty years imposes silence upon you. For every possession is removed by a prescription of thirty years, or of forty years, as are the possessions of religious houses, or of a hundred years, as are the estates of the holy Roman Church. Hence Pope Gelasius says, [to the Bishops of Sicily, letter II, c. 2]:

C. I. Those things which are possessed by bishops for thirty years are claimed by them by right.

Let bishops claim by right for themselves the resources of the church, and also dioceses, which are possessed by some of them and which the law of thirty years has concluded, because the authority of our sons the princes has also issued in such a way that beyond thirty years no one is permitted to appeal concerning that which the period of the laws has excluded. GRATIAN. But they argue to the contrary: By the authority by which you impose silence upon us, by that authority we close your mouths. For the same Gelasius says: "By no presumption the status of parishes, etc." Therefore, if a temporal objection cannot tear apart a diocese once constituted, it is evident that it will not protect you either, so that, by changing the status of our parish, you may claim for yourselves by a claimable usurpation tithes once lawfully assigned to us. But how these authorities are to be distinguished will be found in the cause concerning monks. PART II. § 1. Now it is asked concerning the right of conducting funerals: which of these churches has the right of burying these persons? As Jerome writes, married persons appear to be placed in one tomb. For he says:

C. II. Children are to be placed in the tomb of their parents.

Hebron is said to be the city of three men, because three patriarchs were buried in it, in the double cave with their three wives, that is, Abraham and Sarah, Isaac and Rebecca, Jacob and Leah, besides Adam himself and Eve his wife. Tobias says to his son: "When God has received my soul, you shall bury my body, and you shall honor your mother all her days; and when she has completed her time, you shall bury her beside me in one tomb." The same: § 1. Let one tomb join those whom one marriage joined, because they are one flesh, and let man not separate those whom God joined.

[C. III.]

Likewise Augustine. PART III. Let every woman follow her husband, whether in life or in death. Likewise Gregory: § 1. The sister of Saint Benedict was buried in the tomb which he had prepared for himself, so that burial might not separate the bodies of those whose mind had always been one in the Lord. GRATIAN. Likewise Joseph, dying in Egypt, asked his brothers that at the time of His visitation they should carry his bones with them and place them in the tomb of his fathers. § 1. Likewise, it was

said to the prophet who, contrary to the command of the Lord, had eaten in Bethel after being forbidden: "Your corpse shall not be brought into the tomb of your fathers." § 2. Likewise, it is read of certain persons in the Book of Kings: "He died and was laid with his fathers," that is, in the tomb of his fathers. § 3. Likewise, in the New Testament it is read that blessed Philip built himself a tomb in which he and his daughters rested. § 4. Likewise, blessed Severus, Archbishop of Ravenna, ordered a tomb to be made, in which he placed himself, his wife, and his daughter. § 5. From all these examples it is gathered that the bodies of children are to be placed in the burial place of their parents. Therefore, because the parents of these persons are buried at the former churches, these persons also ought to be buried at the same churches. § 6. To the contrary, Adam, as you assert, was buried in the city of Arba. But were all his children buried there? So great a multitude of the human race could not so easily be enclosed in so small a tomb. § 7. Likewise Abraham was buried there. But were Ishmael and Midian and the others whom he begot from Keturah buried there? § 8. Likewise Isaac was placed there. But was Esau buried with him? § 9. Likewise Jacob was placed there. But was any of his sons besides Joseph buried with him? Rachel also is read to have been buried not in Hebron but near Bethlehem. From the example of these persons, therefore, it is evident that children are free to be buried in the tombs of their fathers, and they are free to find lodging elsewhere for their bodies according to the suitability of places and times. Therefore, by this example these persons are not compelled to be buried in the tombs of their fathers. § 10. Likewise, it is not permitted to change things defined by laws. But things not expressed by laws follow the judgment of human will. Yet it is defined by laws to whom tithes are to be paid, and therefore the giver is not permitted to change this. But where each person is to be buried is not expressed by laws, and therefore it rests in the will of the person to be buried. Hence blessed Gregory says:

C. IV. The last will of the deceased ought to be observed. The last will of the deceased is to be preserved in every way.

PART IV. GRATIAN. This is to be understood concerning a free man and not concerning a slave. For a slave cannot compose the written instrument of a testament. Hence Pope Gelasius writes to Bishop Honorius:

C. V. A slave cannot make a testament.

We also wish it not to escape your sincerity that it has been reported to us that Ampliatus the leaseholder—who is established not only to be a slave of the church, but to be so entangled in accounts from many years that, even if he were freeborn, he would in every way be held liable until he had rendered all the accounts—has endeavored with rash daring to compose the written instrument of a testament, although all his peculium is not doubted to be bound by the laws to ecclesiastical right. Therefore let your fraternity oppose these presumptions in our place, and permit absolutely nothing to be done by any surreption. And if by chance anything human should befall him, since he is said to be advanced in years, let your unanimity immediately command, without delay, that his substance be delivered under a faithful inventory only to those sons of his to whom the patrimony is proved to have been committed, until he is compelled to render the lord's portions unimpaired for all the periods during which he is known to have administered this patrimony. PART V. GRATIAN. Therefore, because according to Gregory the last will of the deceased is to be preserved, their bodies are to be buried according to the will of these persons, not according to the judgment of your disposition. Likewise it is read in the Council of Tribur:

C. VI. Where each person ought to choose burial for himself.

Wherever the possibility of times or places permits, let burials be celebrated at the greater church where the seat of the bishop is. But if this appears difficult because of the harshness of the time or place, let him be buried at the church where a religious congregation of religious canons, monks, or nuns dwells in common. But if this also appears unsuitable, where anyone paid tithes while alive, there let him be buried when dead. GRATIAN. Therefore, because he paid the tithe to us while alive, he is also to be buried among us when dead. Likewise, if anyone should cross from province to province and establish a domicile for himself there, having been freed from the authority of the former judge, he would be subjected to the jurisdiction of that judge in whose province he chose a seat for himself. Therefore, because these persons passed from your diocese into ours, having been freed from your authority, they are subjected to our right. Therefore the right of conducting their funerals is ours. But that statement of Pope Melchiades is objected:

C. VII. It is not permitted by one's own rashness to forsake the burial place of one's parents.

It pleased the great council in all respects that no one, by the rashness of his own judgment, take care to resort for the sake of burial to any church other than the one to which the usage of his ancient parents is reported to be subject by canonical institution, unless, hindered by illness, he has advanced into another region for any business. In addition to these things, if any prelate strives to act against them, let him know that he subjects himself to the ecclesiastical bond. GRATIAN. But it is one thing not to follow the usage of one's ancient parents from the pride of rashness, and another to choose a new burial place for oneself on a reasonable occasion. One strives against the authority of Pope Melchiades who, led by pride or hatred, or enticed by vain persuasions or various little gifts, disdains to follow the burial place of his parents. But according to Gregory, one who for a certain reason seeks a new lodging for his body has a free last will. § 1. Or, as certain persons distinguish, the last will of each person is free not in choosing burial for himself but in making a testament. Hence it is also called a testament, because by it each person freely testifies what he wishes to be done with his own goods after his death. § 2. But the will of the testator does not appear free when, according to Augustine, a testamentary distribution of resources ought to be made according to the number of children; for example, if anyone has one son, let him reckon Christ as another; but if two, let him make Christ the third, and so in order. And according to Leo, each person is ordered to leave half of the things which he bequeaths to Christ to the church at which he received the sacraments of the faith. But that statement of Augustine is not the statement of one commanding but of one dissuading, lest anyone in anger disinherit his son and leave the whole to Christ. For he says in his second sermon on the life of clerics:

C. VIII. A portion of the inheritance is to be offered to God according to the number of children.

If anyone is angry with his son and, dying, disinherits him, if he were living, would I not appease him? Ought I not reconcile his son to him? How, therefore, do I wish him to have peace with his son when I covet his inheritance? But plainly let him do as I have often exhorted. He has one son: let him reckon Christ as another; he has two: let him reckon Christ as the third; he has ten: let him make Christ the eleventh, and I receive it. GRATIAN. By this authority, of course, a measure is fixed for the testator, not one which he is compelled to discharge but one which he is prohibited from exceeding.

PART VI. § 1. But those who are unwilling to render the offerings of the deceased are to be excommunicated.

Hence in the Fourth Council of Carthage, [c. 95]:

C. IX. Let those who deny offerings of the deceased to churches be excommunicated.

Let those who either deny offerings of the deceased to churches or render them with difficulty be excommunicated as murderers of the needy.

C. X. Let those faithless persons who retain offerings of the deceased be cast out of churches.

Likewise from the Council of Vaison, [I, c. 4]. Those who retain the offerings of the deceased and delay delivering them to churches are to be cast out of the church as faithless persons, because it is certain that this provocation of divine piety reaches even to the emptying of the faith, since both the faithful departing from the body are defrauded of the fulfillment of their vows and the poor of the solace of food and necessary support. Therefore such persons are to be regarded as murderers of the needy and as not believing the judgment of God. Hence one of the Fathers also inserted this into his writings, in a fitting judgment, in which he says: "To seize something from a friend is theft, but to defraud the church is sacrilege."

C. XI. Let those who have presumed to retain things offered to churches or left by testament be excommunicated.

Likewise from the Council of Agde, [c. 4]. Let clerics or secular persons who persist in retaining the offerings of parents, whether donated or left by testament, or who have believed that what they themselves donated to churches or monasteries is to be taken away, just as the holy synod has established, be excluded from the churches as murderers of the poor until they restore them. § 1. But if any cleric has committed theft against the church, let foreign communion be assigned to him. PART VII. GRATIAN. It is likewise asked whether anything is to be exacted for the burial of the dead. Concerning these matters Gregory writes thus in the *Register* to Januarius, Bishop of Sardinia:

C. XII. No gift is to be exacted for burial.

Nereida, a most illustrious woman, complained to us that your fraternity wished to exact solidi from her for the burial of her daughter. But after, by God's authorship, we attained the honor of the episcopate, we altogether forbade this vice also from our church, and we did not permit it to be usurped again through a depraved custom, mindful that when Abraham requested from the sons of Ephron, that is, from the sons of Seor, a tomb at a price for burying the body of his wife, he refused to accept a recompense, lest he appear to have obtained profit from a corpse. Therefore, if a pagan man was of such great consideration, how much more ought we, who are called priests, not to do this? Hence I admonish that this vice of avarice not be presumed to be attempted again against others. § 1. But if at any time you permit someone to be buried in your church, if indeed his parents, kinsmen, or heirs should spontaneously wish to offer anything for lights, we do not forbid it to be accepted. But we altogether prohibit anything from being requested or exacted, lest—something exceedingly irreligious—the church be said, which God forbid, to be venal, or you appear to rejoice in human deaths if you endeavor to seek gain in any way from their corpses.

C. XIII. Even when compelled, we ought not to accept a price for burial.

Likewise Jerome on Genesis. After Ephron was overcome by the price, so that he sold the tomb and accepted silver, although Abraham compelled him, the letter *waw*, which among them is read as *o*, was removed from his name, and instead of Ephron he was called Ephran, Scripture signifying that he was not of consummate and perfect virtue, who was able to sell the memorial of the dead. § 1. Therefore let those who voluntarily sell tombs and are not compelled to accept a price, but extort something from the unwilling, know that their name is changed and something of their merit perishes, since even he who accepted unwillingly is secretly reproved.

C. XIV. Concerning the same.

Likewise from the Council of Tribur, [c. 16]. For it is written in the ecclesiastical book: "Do not withhold grace from the dead, knowing that we shall all die." And likewise: "All things which have sprung from earth shall be turned back into earth." Why do you sell earth to earth? Remember that you are earth and shall return to earth, and that death is to be yours and draws near, even if it delays. Recall that the earth belongs not to man but, as the Psalmist commemorates, "The earth is the Lord's, and its fullness." If you sell the earth, you will be held guilty of invasion of property. Freely you received from God; freely give on His behalf. Therefore let it be forbidden to absolutely all Christians to sell earth to the dead and to deny the burial that is owed, unless perhaps the kinsmen and friends of the deceased should wish freely to give something for the sake of the man's name and the redemption of his soul.

C. XV. Concerning the same.

Likewise from the Council of Vaison. It is to be commanded according to the authority of the canons that they exact no gift for tombs and for persons to be buried, unless perhaps the one who is buried, while living, ordered something from his goods to be bestowed upon the church in whose churchyard he is buried, or even after his death those to whom the making of his alms was committed should wish spontaneously to give something from his goods; and nevertheless nothing shall in any way be exacted from them by the priests or by those who preside over the places and villages. § 1. It is also to be forbidden according to the institutions of our predecessors that persons be buried in no way in the church, but in the churchyard, or in the portico, or in the exedrae of the church. But within the church, or near the altar where the body and blood of the Lord are confected, let them in no way be buried.

C. XVI. Those whose sins have not been forgiven are not helped after death by sacred places.

Likewise Augustine. PART VIII. Those whose sins have not been forgiven cannot be helped after death by sacred places, because, if those whom graver sins weigh down cause themselves to be buried in sacred places, it remains that they be judged for their own presumption, since the sacred places do not free them, but the guilt of rashness accuses them.

C. XVII. To whom it is profitable to be buried in a church.

Likewise Gregory, [book IV of the *Dialogues*, c. 50]. When grave sins do not weigh them down, then it profits the dead if they are buried in churches, because, whenever their kinsmen come to those same

sacred places, they also behold the burial place of their own, remember them, and pour out prayers to the Lord for them. For the bodies of those whom grave sins weigh down are placed in churches for a greater accumulation of condemnation rather than for their release.

C. XVIII. Who may be buried in a church.

Likewise from the Council of Mainz, [I, c. 52]. Let no dead person be buried within a church unless bishops, abbots, worthy priests, or faithful laymen. GRATIAN. But what profits the dead from being buried beside a church, and what reaches them, Augustine shows in the book *On the Care to Be Taken for the Dead,* [last chapter], saying:

C. XIX. Why the dead are buried beside a church.

Let us not think that anything reaches the dead for whom we take care except that which we solemnly supplicate for them by the sacrifices either of the altar, of prayers, or of alms, although these do not profit all for whom they are done, but only those who, while they live, cooperate so that they may profit them. But because we do not discern who they are, it is fitting that these things be done for all the regenerated, so that none of those to whom these benefits can and ought to reach may be passed over. For it is better that these things be superfluous to those whom they neither harm nor profit than that they be wanting to those whom they profit. § 1. Nevertheless, each person acts more diligently for his own necessary ones, so that the like may be done for him by his own. § 2. But whatever is expended upon burying the body is not a safeguard of salvation but an office of humanity, according to the affection by which no one ever hates his own flesh. Hence it is fitting that one take whatever care he can for the flesh of his neighbor when he who took care of it has departed from it. And if those who do not believe the resurrection of the flesh do these things, how much more ought those who believe to do them, so that an office of this kind expended upon the body—yet upon it as one that will rise again and remain in eternity—may also be in some manner a testimony of the same faith. § 3. But as to the fact that each person is buried at the memorials of the martyrs, this alone appears to me to profit the deceased: that, by commending him also to the patronage of the martyrs, the affection of supplication for him may be increased. GRATIAN. To the contrary Jerome, [on the Epistle to the Galatians, c. 6, upon the words "Each shall bear his own burden"]:

C. XX. After death the prayers of the living do not profit.

In the present age we know that we can help one another either by prayers or by counsels. But when we have come before the tribunal of Christ, neither Job nor Daniel nor Noah will be able to entreat for anyone, but each shall bear his own burden. GRATIAN. But this is to be understood concerning the impenitent, of whom the Prophet says: "He shall not give his propitiation to God, nor the price of the redemption of his soul, and therefore a brother shall not redeem him, but he shall labor forever and shall live unto the end." But it cannot be understood concerning others.

Hence Gregory to Archbishop Boniface:

C. XXI. The good works of the living profit those who died in penitence.

For you are known to have consulted concerning those who are dying, whether it is permitted that offerings be offered for them. Holy church holds thus: that each person offer offerings for the truly Christian dead and that the priest make commemoration of them; and although we are all subject to

sins, it is fitting that a priest make commemoration and intercede for the Catholic dead. Nevertheless it shall not be permitted to do any such thing for the impious, although they had been Christians.

C. XXII. The souls of the dead are released in four ways.

The same. The souls of the deceased are released in four ways: either by the offerings of priests, or by the prayers of saints, or by the alms of dear ones, or by the fasting of kinsmen. § 1. But the care of the funeral, the condition of burial, and the pomp of the obsequies are consolations of the living rather than aids of the dead. If a costly burial profits an impious man, a cheap burial or none will harm a pious man. § 2. Yet the bodies of the deceased, and especially of the righteous, are not therefore to be despised and cast away. § 3. There it is also salutarily learned how great the recompense can be for the alms which we furnish to the living and sentient, if even that which the diligence of duty renders to the limbs of men devoid of life does not perish before God.

C. XXIII. Before the day of judgment the dead are aided by sacrifices and alms.

Likewise Augustine in the *Enchiridion*, [cc. 109 and 110]. The time placed between the death of a man and the final resurrection contains souls in hidden receptacles, according as each is worthy either of rest or of distress, on account of what it obtained in the flesh while it lived. Nor is it to be denied that the souls of the deceased are relieved by the piety of their living kin when the sacrifice of the Mediator is offered for them or alms are made in the church. But these things profit those who, when they lived, merited that afterward these things could profit them. § 1. For there is a certain manner of living neither so good that it does not require these things after death nor so evil that these things do not profit it after death. But there is a manner so good that it does not require these things, and there is again a manner so evil that it cannot be aided by them when this life has passed. Therefore every merit is acquired here by which someone can be relieved or burdened after this life. And a little later: § 2. When sacrifices of the altar or of any alms whatsoever are offered for all the baptized, they are thanksgivings for the very good, propitiations for those who are not very evil, and for the very evil, even if they are no aid to the dead, nevertheless they are consolations of the living. But for those whom they profit, they profit either so that there may be full remission or certainly so that the condemnation itself may be made more tolerable.

PART IX. GRATIAN. But concerning the observance of the third, seventh, thirtieth, or fortieth day, it is asked whence it took its origin. Ambrose in the book *On the Death of Emperor Theodosius*:

C. XXIV. Why certain days are observed in the commemoration of the dead.

Because some have been accustomed to observe the third day, others the seventh, others the thirtieth, and others the fortieth in the offices of the dead, let us consider what the reading teaches. "When Jacob died," it says, "Joseph commanded his servants the embalmers that they should bury him, and the embalmers buried Israel, and forty days were fulfilled. For thus the days of burial are numbered. And he mourned him for seven days." Therefore that solemn observance which the reading prescribes is to be followed. But it is also written in Deuteronomy: "The children of Israel mourned Moses for thirty days, and the days of mourning were completed." Therefore each observance has authority, by which the necessary office of piety is fulfilled. PART X. GRATIAN. But Cyprian forbids mourning and being sorrowful both for our own death and for that of others, saying:

C. XXV. We ought to be sorrowful neither for our own death nor for that of others.

How preposterous and how perverse it is that, when we ask that the will of God be done, when He calls and summons us from this world, we do not immediately obey the command of His will, but resist and struggle, and after the manner of obstinate servants are brought to the sight of the Lord with sadness and grief, departing from here by the bond of necessity, not by the obedience of will, and wish to be honored with heavenly rewards by Him to whom we come unwillingly. The same: § 1. To us also, the least and last, how often has it been revealed, how frequently and manifestly has it been commanded by God's condescension that I should testify continually and preach publicly that brothers set free from the world by the Lord's summons are not to be mourned, since we know that they are not lost but sent ahead, that in departing they precede us, as those setting out, as those sailing, are accustomed to do.

C. XXVI. Mourning the dead occurs from faintheartedness.

Likewise John Chrysostom, on the Epistle to the Hebrews. Wherever we may be buried, the earth is the Lord's and its fullness. Let that, namely, which ought to be done be accomplished. But to mourn, deplore, and lament those who depart from this life occurs from faintheartedness.

GRATIAN. But this is understood of despair concerning the future resurrection. Hence the Apostle also does not say simply, "We do not wish you to be ignorant concerning those who sleep, that you may not be sorrowful," but adds, "as also the others who have no hope." For we are not prohibited from mourning the dead from an affection of piety and a regard for humanity, just as we read that some of the saints expended pious tears upon the obsequies of others. Hence Pope Anastasius also, [letter II to Nerius]:

C. XXVII. Those who have hope of the future resurrection ought not to be excessively sorrowful concerning the dead.

Perhaps those who do not know another life, who do not trust that the passage from this world is to something better, have a just excuse for prolonged grief. But we who believe and teach this ought not to be excessively sorrowful concerning the dying, lest that which among others bears the appearance of piety should rather be a fault in us. For it is in some manner a kind of distrust to lament, contrary to that which each person preaches, while loving justice, as the Apostle says: "But we do not wish you to be ignorant concerning those who sleep, that you may not be sorrowful as also the others who have no hope."

C. XXVIII. Concerning the same.

Likewise from the Third Council of Toledo, [c. 22]. Those who depart from this life by divine summons ought to be carried to the tomb only with psalms and the voices of those singing psalms. But let it suffice that the service of divine canticles is expended upon the bodies of Christians in hope of the resurrection. The holy Apostle forbids us to mourn the deceased, saying: "But concerning those who sleep, I do not wish you to be sorrowful, as also the others who have no hope." And the Lord did not weep for the dead Lazarus, but wept for him who was to be raised again to the miseries of this life. If a bishop can forbid this to all Christians, let him not delay to act. Nevertheless, we judge that it ought in no way to be done otherwise for religious persons. For thus the bodies of

deceased Christians ought to be buried throughout the whole world. PART XI. GRATIAN. It is also asked concerning the dead whether they know the things which are done here by the living. Isaiah says in the person of the afflicted people: "Abraham our father did not know us." Augustine also testifies to the same in the book *On the Care to Be Taken for the Dead*, saying, [c. 15]:

C. XXIX. The dead do not know of themselves the things which are done here.

It must be confessed that the dead indeed do not know what is done here while it is done here; but afterward they hear from those who proceed from here to them by dying—not indeed all things, but those things which these are permitted to remember and which it is fitting that those to whom they report them should hear. The dead can also hear something from the angels who are present at the things which are done here, according as He to whom all things are subject judges that each of them ought to hear. § 1. Many also believe that some of the dead come to the living, just as, conversely, divine Scripture testifies that Paul was caught up from the living into paradise. PART XII. GRATIAN. But concerning those who are suspended on gibbets, it is asked whether they are to be buried beside a church. Concerning them it was established thus in the Council of Mainz, [II, under Rabanus, c. 27]:

C. XXX. Communion is not to be denied to those who are suspended on gibbets.

It was asked by some brothers concerning those who are suspended on gibbets for their crimes after confession made to God, whether their corpses are to be carried to churches, offerings are to be offered for them, and Masses are to be celebrated, or not. To them we respond: If communion is to be given at the end, according to the precepts of the canons, to all who make pure confession of their sins and worthily repent, why do the canons interdict communion or burial to those who have paid the final penalty for their sins and confess or desire to confess? For it is written: "God does not judge twice for the same thing."

[PALEA. C. XXXI.

Thieves and robbers, if they are killed while stealing or plundering, it has seemed good that prayer not be made for them. If, after being captured or wounded, they have confessed to a priest or deacon, we do not deny them communion.]

[PALEA.

C. XXXII. Concerning the same.

Likewise from the Council of Orléans. If a thief or robber caught in plunder can be captured without killing, and nevertheless he is killed, because they were created in the image of God and baptized in His name, their killers shall not enter the church for forty days. Clothed in woolen garments, let them abstain from foods and drinks which are forbidden, from the marriage bed, from the sword, and from riding. On Tuesday, Thursday, and Saturday let them use in turn and temperately some kind of legumes or vegetables, fruits, and small fish, with moderate beer.

But if it is proved by truthful witnesses that, without premeditation of hatred, in freeing themselves and their own they killed members of the devil who could not be captured, we do not impose

penance for homicide upon them, unless they themselves should wish to do something that belongs to humanity. But if he is a priest, let him not be deposed; nevertheless let him do penance all the days of his life.]

Causa XIV

GRATIAN. The canons of a certain church raise a question concerning estates; they produce witnesses from their own brothers; they lent money to merchants so that they might receive profits from their wares. (QUESTION I.) It is asked whether it is permitted for them to reclaim their own things. (QUESTION II.) Second, whether those witnesses are to be heard. (QUESTION III.) Third, whether that is to exact usury. (QUESTION IV.) Fourth, whether clerics or laymen are permitted to demand usury from anyone. (QUESTION V.) Fifth, whether alms can be made from usury. (QUESTION VI.) Sixth, whether usurers are able to do penance unless they restore what they received evilly.

Question I

GRATIAN. That they cannot reclaim their own things appears capable of being proved easily. For the Lord says in the Gospel: "If you wish to be perfect, go and sell all that you have and give to the poor." Therefore, because these persons undertake the way of perfection, it is not permitted for them to have things of their own. Much less, therefore, is it permitted for them to reclaim them, because that which it is not permitted to possess ought not to be reclaimed. § 1. Likewise: "If anyone wishes to take away your tunic and contend with you in judgment, leave him your cloak also." § 2. Likewise the Apostle in the Epistle to the Corinthians: "Therefore, if you have secular judgments, it is altogether a sin in you." § 3. Likewise Gregory, expounding "All things are lawful for me, but I shall be brought under the power of none," says: "When the mind follows desires that have been conceived, it is convicted of serving the things by whose love it is overcome."

C. I. Let a bishop, even when summoned, not litigate for transitory things.

Likewise from the Fourth Council of Carthage, [c. 19]. Let a bishop, even when summoned, not litigate for transitory things. GRATIAN. Therefore, because those who are perfect are prohibited generally from contending in judgment, it is evident that these persons are not permitted to stand before a judge. § 1. To these matters reply is thus made: One who is perfect is prohibited from standing in judgment for the purpose of capturing gain, but not for avoiding loss. Or otherwise: It is one thing to possess one's own things and another to be the procurator of things held in common. Canons do not possess things of their own, because things offered to God belong to no individual. For they use the goods of the church not as their own but as things entrusted to them for dispensation. Hence Prosper in the book *On the Contemplative Life*: "The priest to whom the care of dispensation has been committed, etc." Seek this in the cause of him from whom money was exacted for entry into a monastery. Therefore, just as these persons do not possess their own things, so neither do they reclaim their own things, but the goods of the church whose administration they conduct. Similarly, the fact that they are prohibited from contending in judgment is to be understood thus: namely, that they do not stand before a judge for themselves, but for others. But we read that some of the saints stood before a judge for others and petitioned the judge for them. These persons,

however, stand not for themselves but for the poor, for whose necessities they reclaim things that will be profitable; and thus they are not prohibited from standing before a judge. § 2. But that statement of the Gospel, "If anyone takes your tunic from you, etc.," belongs not to one commanding but to one exhorting. Hence Augustine says, [book XIX *Against Faustus*, c. 25]:

C. II. One who exacts beyond what is owed sins, not one who reclaims what is owed to him.

What is owed, although it is kindly remitted, is nevertheless not unjustly reclaimed. But one who exacts beyond what is owed sins, and therefore the law, fixing a measure, established the penalty of retaliation. But you are as far from the sin of an unjust exactor as you do not exact at all what is owed, and therefore the good Master says: "To him who strikes you on the cheek, offer the other also," especially lest we ourselves also be compelled to render what is owed by Him who owes nothing. [GRATIAN.] Thus you will understand the other things also.

[C. III.]

The same, *On the Lord's Sermon on the Mount*. Whoever does not obey precepts is guilty and liable to punishment. And a little later: § 1. Not to obey a precept of the Lord is a sin; and if you are unwilling to use a counsel, you will attain less good. Likewise Gregory in the letter to Jovinian: § 2. That which is prescribed is commanded; that which is commanded must necessarily be done; if it is not done, it has punishment. § 3. Where counsel is given, there is the choice of the one making an offering; where there is a precept, there is the necessity of the one serving.

Question II

GRATIAN. But concerning what is asked, whether they can produce witnesses from their own brothers, it appears to be prohibited by many authorities. For the laws both of the sacred canons and of secular princes prohibit a witness from one's own household from being produced against another. For each person can testify against himself, but by no means for himself. Therefore, because these persons are produced so that they may bear testimony for themselves—for they do not think that they will be wholly exempt from the utility of their church—it is evident that their voice in such matters is not to be heard. But this distinction and examination of witnesses is to be observed in criminal causes; in civil causes, however, not in every respect. For in a criminal cause it is not permitted for a witness from one's own household to be produced, but in a civil cause it is permitted to prelates of the church. Hence Paschal II writes to Guy, Archbishop of Vienne and legate of the apostolic see, saying:

C. I. Clerics can bear testimony for their church.

We wonder greatly at your prudence because in the matter of blessed Stephen you were unwilling to accept the testimony of those clerics themselves. For the kinds of causes are diverse, nor are crimes treated in all causes. In crimes, indeed, that strictness concerning accusers and witnesses which is contained in the canons is to be observed, lest members of the household be assumed for proof. But in matters of possessions or affairs of this kind, those especially are to be assumed who conducted those same affairs, concerning whose hearing and sight there ought to be no hesitation. Therefore, if those same clerics are suitable for the assertion of that cause, let them in no way be removed, but, as

was determined by other letters, let that dispute between the canons of Saint John and Saint Stephen be decided more fully. GRATIAN. It can also be understood otherwise. Let members of a household not be admitted for proof, namely so that they bear testimony for those whose household members they are. But let these persons, just as was said above concerning plaintiffs, give testimony not for members of their household but for the church, which is the mother of all the poor. But in the making of instruments of secular transactions, let priests not be called as witnesses; but if by chance it should happen that they were present at a contract, let them give testimony at the command of the bishop. Hence it was established in the synod held at Rome by Pope Eugene [II, c. 13]:

C. II. Priests are not to be called as witnesses in the making of instruments.

Although the testimony of priests is held credible, nevertheless they are not to be asked as witnesses in secular transactions themselves for the making of instruments, because it is not fitting for them to be involved in such matters. But if by some event they have been involved in a cause and have seen or heard something, where no suitable secular persons are found, lest the truth be concealed and an evil man be esteemed as good, let it be within the providence of their own bishop that they testify honorably to the truth either before him and competent judges or in another manner.

Question III

GRATIAN. But that to pursue profits beyond the principal is to exact usury is proved by the authority of Augustine, who writes on Psalm 36, [at the verse "All day long"], saying:

C. I. One who seeks more than he gave receives usury.

If you lend at interest to a man—that is, if you give your money as a loan—from whom you expect more than you gave, not money alone but anything more than you gave, whether it be wheat, wine, oil, or anything else, if you expect to receive more than you gave, you are a usurer and in this are to be condemned, not praised.

C. II. Whatever is exacted above what was given is usury.

Likewise Jerome on Ezekiel, book VI, [at c. 18]. Certain persons think that usury exists only in money. Foreseeing this, divine Scripture removes the excess of every thing, so that you do not receive more than you gave. Likewise: § 1. Others are accustomed to receive little gifts of various kinds for money lent at interest, and they do not understand that Scripture calls usury and excess whatever it is, if they have received more than what they gave.

C. III. Whatever accrues to the principal is usury.

Likewise Ambrose, *On Naboth*. Many, evading the precepts of the law, when they have given money to merchants, do not exact usury in money, but receive profits from their wares as though they were interest. Therefore let them hear what the law says: "You shall accept neither usury," it says, "of foods, nor of any things." Likewise: § 1. Food is usury, clothing is usury, and whatever accrues to the principal is usury; and whatever name you wish to impose upon it, it is usury. Likewise: § 2. If anyone thinks that a banquet is to be furnished, he sends to a merchant so that he may bring him freely a small cup of absinthe wine; he directs a request to an innkeeper for Picene or Tyrian wine; to

a butcher, so that he may procure a sow's womb for him; to another, so that he may prepare fruits for him.

C. IV. When more is exacted than is given, usury is received.

Likewise from the Council of Agde. Usury exists where more is sought than what is given. For example, if you give ten solidi and seek more, or give one modius of grain and exact something in addition. GRATIAN. Behold, it is shown evidently that whatever is exacted beyond the principal is usury.

Question IV

GRATIAN. But that neither clerics nor laymen are permitted to exact usury is proved by the authority of Gelasius and others. For Pope Gelasius says, writing to the clerics throughout Lucania and Sicily, [c. 17]:

C. I. Let clerics abstain from the gains of trade.

Let clerics know that they are to abstain from unworthy gains and to cease from every contrivance or cupidity of any kind of trade. But in whatever rank they may be, if they are unwilling to cease, let them soon be compelled to abstain from clerical offices.

C. II. Let ministers who lend at interest be excommunicated.

Likewise from the First Council of Arles, which Pope Sylvester confirmed, [c. 12]. Concerning ministers who lend at interest, it has pleased us, according to the form divinely given, that they abstain from communion.

C. III. Let those who wish to be in the clergy abstain from the pursuit of trade.

Likewise from the Council of Tarragona, [c. 2]. It has been confirmed by the statutes of the canons that whoever wishes to be in the clergy shall not employ the pursuit of buying more cheaply and selling more dearly. But if he wishes to practice it, let him be restrained from the clergy.

C. IV. Let one exacting usury or excess be removed from the clergy.

Likewise from the Council of Pope Martin, [c. 62]. If anyone, having forgotten the fear of the Lord and of the sacred Scriptures, which say, "He did not give his money at usury," after this recognition of the great council lends at interest or exacts a hundredth, or seeks shameful profit from any transaction, or through diverse kinds of wine or produce or any thing receives any increases by buying or selling, let him, cast down from his rank, be regarded as alien to the clergy.

C. V. For money which he gave as a loan, let a cleric receive commodities at a just price.

Likewise from the same. If any cleric has loaned a solidus in a time of necessity, let him receive from wine or grain that which at the appointed time shall have been determined to be sold for the sake of trading. But if he has not had the necessary commodity, let him receive that very thing which he gave, without any increase.

C. VI. Let a cleric not receive more than he lent.

Likewise from the Third Council of Carthage, [c. 16]. Let none of the clerics receive more than he lent; if money, let him receive money; if a commodity, let him receive the same commodity that he gave; and whatever else, let him receive as much as he gave.

C. VII. [VIII.] Concerning the same.

Likewise from the Council of Nicaea, [c. 17]. Since many clerics, pursuing shameful gains for the sake of avarice, have forgotten the divine precept in which it was said, "He did not give his money at usury," this holy council has established that, if anyone is found after this determination to receive usury, or to pursue shameful gains from any such transaction, or even to give kinds of grain at one and a half times their amount, everyone who has attempted anything of this kind for gain shall be cast down from the clergy and regarded as alien to ecclesiastical rank.

C. VIII. [VII.] Usury is condemnable even in laymen.

Likewise Pope Leo, [letter I, c. 3]. Nor have we thought that this also should be passed over: there are certain persons captured by cupidity for shameful gain who employ money at usury and wish to become rich by interest. We grieve that this applies, not to say only to those established in clerical order, but even to laymen who desire to be called Christians. We decree that this be avenged more sharply upon those who have been convicted, so that every opportunity of sinning may be taken away.

C. IX. One who buys for less so that he may sell for more pursues shameful profit.

Likewise Pope Julius. Whoever, in the time of harvest or vintage, purchases grain or wine not from necessity but because of cupidity—for example, purchases one modius for two denarii and preserves it until it may be sold for four or six denarii or more—this we call shameful profit.

C. X. One who receives usury commits robbery.

Likewise Ambrose in the book *On the Good of Death*, [c. 12]. If anyone receives usury, he commits robbery; he does not live life.

C. XI. One who slaughters a poor man by interest is no less cruel than one who seizes something from a rich man.

Likewise Augustine to Macedonius, [letter LIV]. What shall I say concerning usuries, which even the laws themselves and judges command to be repaid? Is one who withdraws or seizes something from a rich man more cruel than one who slaughters a poor man by interest? These things indeed, and things of this kind, are certainly possessed evilly, and I would wish that they be restored, but there is no judge before whom they may be reclaimed. But now let us consider prudently what is written: "For a faithful man the whole world is riches, but for an unfaithful man not even a small coin"; do we not convict all those who seem to themselves to rejoice in things acquired and do not know how to use them of possessing what belongs to another? For certainly that which is possessed by right does not belong to another; but that is possessed by right which is possessed justly, and that justly which is possessed well. Therefore everything that is possessed evilly belongs to another; but one who uses

evilly possesses evilly. GRATIAN. Moreover, from whom usury is to be exacted Ambrose testifies, saying, [in the book *On Tobit*, c. 15]:

C. XII. We can exact usury from one whom we harm by right.

Exact usury from him whom you deservedly desire to harm; upon him against whom arms are brought by right, usury is lawfully brought; exact usury from him whom you cannot conquer in war, whom it is no crime to kill. One who demands usury fights without iron; one who has been the usurious exactor of an enemy avenges himself upon the enemy without a sword. Therefore where there is the right of war, there is the right of usury.

Question V

GRATIAN. PART I. But that alms are not to be made from interest or usury, nor from anything acquired evilly, Augustine testifies in the book *On the Words of the Lord*, tractate XXXV:

C. I. Alms cannot be made from usury.

Do not wish to make alms from interest and usury.

C. II. One who offers from robbery is rejected by God.

Likewise Augustine. One who sacrifices from iniquity makes a stained offering. The Most High does not approve the gifts of the iniquitous, nor does He regard the offerings of the iniquitous, nor will He be propitiated for their sins by the multitude of their sacrifices. One who offers sacrifice from the substance of the poor is as one who sacrifices the son in the sight of his father. The bread of the needy is the life of the poor man. One who defrauds him is a man of blood. One who sheds blood and one who commits fraud against a person in need are brothers.

C. III. Nothing is to be seized from the rich so that it may be given to the needy.

Likewise Augustine in a homily. Perhaps someone thinks and says: "There are many rich Christians, avaricious and covetous; I have no sin if I take from them and give to the poor. For since they do nothing good, I shall be able to have a reward." But a thought of this kind is suggested to him by the cunning of the devil. For if he should bestow the whole of what he took, he adds to sin rather than diminishes it.

[PALEA.

C. IV. Concerning the same.

Likewise Jerome. No one who plunders is saved when dying if he has the means from which to make restitution. If he is unable to find those to whom it belonged, let him bestow it upon the church or the poor.]

[PALEA.

C. V. Concerning the same.

Likewise Ambrose. It is not permitted to purchase plunder except with the intention that it be restored to the one from whom it was taken.]

C. VI. One who does not return what was found commits theft.

Likewise from the same. If you found something and did not return it, you plundered it; you did as much as you could, because you did not find more. One who denies another's property would also take it if he could. § 1. God questions the heart, not the hand.

C. VII. When one expends alms from permitted and well-acquired goods, it pleases God.

Likewise Gregory, [book VII, letter 110, to Syagrius]. That alms pleases the eyes of our Redeemer which is not heaped up from illicit things and iniquity, but which is expended from permitted and well-acquired goods.

C. VIII. One who does not return a thing found sins.

Likewise Jerome in the book on Leviticus. Many think that it is without sin if they retain another's property which they have found, and they say, "God gave it to me; to whom have I to return it?" Let them learn that, if anyone does not return things found, this sin is similar to robbery.

C. IX. Good use does not justify things acquired unjustly.

Likewise Augustine, [book *On the Good of Marriage*, c. 14]. For neither, if anyone so uses fields unjustly and wrongly invaded that he makes generous alms from their fruits, does he thereby justify the robbery. § 1. Nor, if another avariciously broods over a paternal estate or one justly acquired, is the rule of civil law by which he became the lawful possessor therefore to be blamed. § 2. Nor will the perversity of a tyrannical faction be praiseworthy if it treats tyrants subjected to it with royal clemency. § 3. Nor is the order of royal power to be censured if a king rages with tyrannical cruelty. For it is one thing to wish to use an unjust power justly, and another to wish to use a just power unjustly.

C. X. It is not permitted to aid one person with loss to another.

Likewise Ambrose in book [III] *On Duties*, [c. 9]. Finally, if one cannot be aided unless another is harmed, it is more advantageous that neither be aided than that one be burdened. And therefore it is not priestly to intervene in pecuniary causes in which it cannot happen that frequently one who is defeated is not harmed, since he thinks himself defeated by the benefit of the intercessor. Therefore it belongs to a priest to harm no one and to wish to profit all; but to be able to do so belongs to God alone.

C. XI. Alms and sacrifices which are offered from crime do not please God.

Likewise Gregory in the *Register*, [book VII, indiction 2, letter 126, to King Reccared]. It is written: "The victims of the impious are abominable to God; the vows of the righteous are pleasing"; for in the judgment of almighty God, not what is given but by whom it is given is considered. Hence it is written: "God regarded Abel and his gifts, but He did not regard Cain and his gifts." For when

Scripture was about to say that the Lord regarded the gifts, it first carefully stated that He regarded Abel. From this matter it is plainly shown that it was not the offerer who pleased because of the gifts, but the gifts because of the offerer. "For the Most High does not approve the gifts of the iniquitous, nor does He regard their offerings, nor will He be propitiated for their sins by the multitude of their sacrifices." Likewise: "The Lord is far from the impious, and He will hear the prayers of the righteous." PART II. GRATIAN. To the contrary, it is read in Exodus that the children of Israel, when about to depart from Egypt, received golden and silver vessels as a loan from their neighbors, from which they afterward built the tabernacle for the Lord. Augustine replies to these matters in the book *Questions on Exodus*, [question 39]:

C. XII. It is not permitted to seize another's property by the example of the Israelites despoiling the Egyptians.

The Lord said to Moses: "Let a man ask from his male neighbor and a woman from her female neighbor vessels of gold and silver and clothing." No one ought to think that an example is to be taken from this for despoiling a neighbor in this manner. For God commanded this, who knew what it was fitting for each person to suffer. Nor did the Israelites commit theft, but they furnished ministry to God who commanded it. PART III. GRATIAN. Likewise it is objected: To seize another's property is not against a precept, since robbery appears to be prohibited by no command of God. But by the name of theft every illicit usurpation of another's property is understood. Hence Augustine in the same book, [question 71]:

C. XIII. To seize something violently is of greater punishment than to steal.

To take away secretly is punishable; to seize openly is of much greater punishment. Therefore to take from an unwilling person, whether secretly or openly, has its own precept. For by the name of theft every illicit usurpation of another's property is well understood. For He who prohibited theft did not permit robbery, but surely willed robbery also to be understood by the name of theft in the law of the Old Testament. For by the part He signified the whole: whatever of a neighbor's property is taken illicitly. GRATIAN. By these authorities it is proved that no one can make alms either from things found or from things evilly acquired. PART IV. § 1. But Augustine testifies to the contrary, [sermon XXXV *On the Words of the Lord*], saying:

C. XIV. Good can be made from things acquired evilly.

You who have something from evil, make good from it. You who have nothing from evil, do not acquire from evil. Be good, you who make good from evil; and when you have begun to do something good from evil, do not remain evil yourself. Your coins are converted into good, and do you remain evil? GRATIAN. But this is understood in many ways. For one who restores what he took illicitly makes good from evil. By the name of evil, the care and solicitude of mortals is also expressed. Therefore one makes good from evil who dispenses to the poor what he acquired with labor and solicitude, according to that saying of the Gospel: "Make friends for yourselves from the mammon of iniquity." Or that is acquired from evil which is possessed from a shameful cause, as when an astrologer profits something from the art which he teaches or from the future things which he predicts. But things which are thus acquired from evil can be converted into good. Some things are also sometimes acquired from sin which are justly expended upon the poor.

Hence Augustine to Macedonius, [letter LIV]:

C. XV. Things which are acquired evilly can sometimes be expended well.

Certainly not everything that is taken from an unwilling person is taken away injuriously. For many are unwilling to render either his honor to a physician or his wage to a workman; nevertheless, those who receive these things from an unwilling person do not receive them through injury, for they would rather not be given without injury. § 1. But a judge ought not therefore to sell a just judgment, or a witness true testimony, because an advocate sells just patronage and a jurist true counsel. For the former are employed for examination between both parties; the latter stand on one side. But when judgments and testimonies, which ought not to be sold even when just and true, are sold when iniquitous and false, money is certainly received much more wickedly, because it is also given wickedly, although by willing persons. Nevertheless, one who bought a just judgment is accustomed to reclaim money badly taken from him, because the judgment ought not to have been for sale. But one who gave money for an iniquitous judgment would indeed wish to reclaim it, unless he feared or was ashamed that he had bought it. § 2. There are other persons of inferior station who not improperly receive from both parties, such as the official who is removed and the one to whom an office is assigned. Things extorted by immoderate dishonesty are accustomed to be reclaimed from these persons; and we blame those who have reclaimed such things contrary to custom more than those who received them according to custom, because many persons necessary to human affairs are either invited by benefits of this kind or retained by them. § 3. If these persons have changed their way of life or ascended to a more excellent degree of holiness, they more readily bestow upon the poor as their own the things which they acquired in this manner than restore them as another's property to those from whom they were received. § 4. But if anyone has taken anything contrary to the right of human society by thefts, robberies, calumnies, oppressions, or invasions, we judge that it is to be restored rather than donated, according to the example of Zacchaeus the publican.

Question VI

GRATIAN. PART I. But that penance cannot be done unless another's property is restored Augustine testifies in letter [LIV] to Macedonius.

C. I. Penance is not done if another's property is not restored.

If another's property, on account of which sin was committed, can be returned and is not returned, penance is not done but feigned. But if penance is truly done, the sin will not be remitted unless what was taken is restored—if, as I have said, it can be restored. For often one who takes loses what he took, whether by suffering other evil persons or by living evilly himself, and he has nothing else from which he may make restitution. § 1. To him we certainly cannot say, "Return what you took," unless we believe that he has it and denies it. In such a case, indeed, if he suddenly undergoes certain torments while he is thought to have what he should return, there is no iniquity, because, even if he has nothing from which to return the money taken, nevertheless, while he is compelled by bodily afflictions to return it, he pays the penalties of the sin by which it was taken evilly. § 2. But it is not inhuman to intercede even for such persons, not so that another's property should by no means be restored, but lest man rage against man in vain. And a little later: § 3. But I would say this most confidently: one who intervenes for a man so that he does not restore things evilly taken, and one

who does not compel a person fleeing to him to make restitution, insofar as he honorably can, is an associate in the fraud and crime. For we more mercifully withdraw our help from such persons than expend it upon them. For one who helps another to sin does not furnish help; indeed, he does not help but resists by overthrowing and suppressing. § 4. But surely we neither can nor ought on that account either to exact or to hand him over to be exacted from? We act insofar as episcopal ability grants, threatening sometimes human judgment but especially and always divine judgment. But those unwilling to make restitution whom we know both to have taken evilly and to have the means from which they may restore, we accuse, rebuke, and adjure—some privately, some publicly—according as the diversity of persons appears able to receive a diverse medicine. PART II. GRATIAN. But if anyone has consecrated another's property, he ought to restore not that same thing but its assessed value. Hence Gregory, [book VII, indiction 2, letter 58, to Fantinus the Defender]:

C. II. Let one who consecrates another's property restore its assessed value.

We have discovered that no cause existed on account of which their goods could reasonably have been occupied, and that they were consecrated without counsel and rashly. Therefore we command your Experience that, because what has once been consecrated cannot any longer be restored to them, it be the object of your diligence that the bishop himself ought to give the price. PART III. GRATIAN. But the church ought to intercede before princes for evil persons, not defend them with rash daring. Hence Gregory to Romanus the Defender, [book VII, indiction 2, letter 24]:

C. III. Let the church intercede for evil persons, not rashly defend them.

Let those who are implicated in public thefts not appear to be defended unjustly by us, lest by the daring of an indiscriminate defense we in any way transfer to ourselves the reputation of evildoers; but, insofar as befits the church, by admonishing and by employing a word of intercession, succor those whom you can, so that you both bring help to others and do not stain the reputation of holy church.

PART IV. GRATIAN. But theft is considered not so much in the quantity of the thing as in the disposition of the thief. Hence Jerome in the letter to Titus, [at c. 2]:

C. IV. Theft is committed not only in greater but also in lesser things.

A thief is judged not only in greater but also in lesser things. For not what was taken by theft but the mind of the thief is considered. Just as in fornication the fornication is not different on this account—whether the woman is beautiful or deformed, a maidservant or freeborn, poor or wealthy—but, whatever sort she may have been, there is one fornication, so in theft, however much anyone has taken, he incurs the crime of theft.

Causa XV

GRATIAN. A certain cleric is said to have fallen into a carnal crime before he obtained the priestly blessing. But after he attained the priesthood, having been turned to madness, he killed a certain man. Upon recovering his health, however, he is accused before the bishop by the woman with whom he is said to have fallen. The bishop examines the case on Sunday. The priest denies the crime charged against him; he seeks the patronage of certain clerics for himself, but they furnish patronage

to him not without a price. At last the bishop extorts a confession by tortures; finally, alone and without a synodal hearing, he strikes him with a sentence. (QUESTION I.) It is asked whether things done with an alienated mind are to be imputed. (QUESTION II.) Second, whether clerics are permitted to exact gifts for patronage furnished. (QUESTION III.) Third, whether he is to be condemned from the confession of the woman. (QUESTION IV.) Fourth, whether his case is to be ventilated on Sunday. (QUESTION V.) Fifth, whether compurgation is to be offered to him when he denies the charge. (QUESTION VI.) Sixth, whether his confession is to be extorted by tortures. (QUESTION VII.) Seventh, whether a bishop is able to condemn a priest without a synodal hearing. (QUESTION VIII.) Eighth, if he has confessed spontaneously or has been convicted by others that he sinned before ordination, whether he is permitted to exercise the office of the order received.

Question I

GRATIAN. PART I. But that things done with an alienated mind are not to be imputed appears capable of being proved easily. For some sins appear to consist in the will of the mind, others in an infirmity of nature. But will, as Augustine says in book I of the *Retractations*, [c. 15], is a movement of the mind toward either not losing or attaining something. This was said so that by this definition one who wills might be distinguished from one who is unwilling. § 1. Therefore sins proceed from the will when they are committed by the free judgment of the mind and with the purpose of transgressing. § 2. Moreover, one infirmity is of the mind, another of the flesh. Infirmity of the mind is ignorance; infirmity of the flesh is concupiscence. But the things which proceed from either infirmity are imputed to punishment. Hence it was said of certain ignorant persons: "If anyone is ignorant, he shall be ignored." Such were those concerning whom Christ said to the Apostles: "They will put you out of the synagogue, because they will think that they offer service to God." Concerning the same persons the Apostle also writes in the Epistle to the Romans: "I bear them witness that they have zeal for God, but not according to knowledge." Nevertheless, this ignorance excuses none of them who persists in his perfidy. Things which are done through the languor of nature proceed from infirmity of the flesh; and if they were not imputed to punishment, the Apostle, burdened by the law of the flesh, would by no means say: "Unhappy man that I am, who will deliver me from the body of this death? etc." Therefore, whether sins consist in the will or in infirmity, they are always imputed to punishment. § 3. That statement of Augustine in *On True Religion*, [c. 14], appears contrary to this judgment: "To such an extent is sin a voluntary evil that, unless it is voluntary, it is in no way sin; and this is indeed so manifest that no scarcity of the learned and no multitude of the unlearned dissents from it." Therefore either it is to be denied that sin is committed, or it must be confessed that it is committed with the will. § 4. But the same Augustine shows in book I of the *Retractations*, [c. 13], that this is not to be understood generally concerning all sins, saying: "To such an extent is sin a voluntary evil that it is in no way sin if it is not voluntary. § 5. This definition can appear false; but if it is examined diligently, it is found to be most true. For that sin which is only sin must be considered, not that which is also the punishment of sin. Although even those things which not without merit are called involuntary sins, because they are perpetrated either by those who do not know or by those who are compelled, cannot be said to be altogether involuntary." The same in the same work, [book I, c. 15]: "The definition of sin which we stated—'Sin is the will to retain or obtain what justice forbids, from which it is free to abstain'—is true for this reason: because that which is only sin has been defined, not that which is also the punishment of sin."

C. I. There are no sins of the unwilling except those of the ignorant.

The same in the book [IV] of *Questions*, [question 24, at c. 15 of Numbers]. It is deservedly asked: What are the sins of the unwilling? Are they those which are committed by persons who do not know, or can that which one is compelled to do also rightly be called the sin of an unwilling person? For this also is accustomed to be said to be against the will; but surely he wills that for the sake of which he does it. For example, if a person is unwilling to perjure himself, yet does so because he wishes to live when someone threatens him with death unless he does it. Therefore he wills to do it because he wills to live, and consequently he does not seek in itself to swear falsely, but to live by swearing falsely. But if this is so, I do not know whether these can be called sins of the unwilling, of the kind which here are said to be expiated. For if the matter is diligently examined, perhaps no one wills the sinning itself, but sins for the sake of something else which he wills. For all men who knowingly do what is not permitted would wish it to be permitted. To such a degree does no one seek the sinning itself for its own sake, but for that which follows from it. If these things are so, there are no sins of the unwilling except those of the ignorant, which are distinguished from sins of the willing.

[C. II.]

From the title of the *Digest* concerning injuries, [law 3]. That which has been reported is equally true: those who can suffer an injury can also commit one. Certainly there are some who cannot commit one, such as a madman and a minor who is not capable of fraud. For these are accustomed to suffer injury, not to commit it. For since injury consists in the disposition of the one acting, it will follow that these persons, whether they strike someone or utter an insult, do not appear to have committed an injury. Therefore someone can suffer an injury even if he does not perceive it; but no one can commit one unless he knows that he is committing an injury, even if he does not know to whom he does it. Hence, if anyone strikes another in play or while competing, he is not held liable for injuries. If anyone has beaten a free man while he thinks him his own slave, he is in such a position that he is not held liable for injuries. GRATIAN. Therefore, as appears from the foregoing, whether sins proceed from the will or from infirmity, it is manifest that they are imputed. But infirmity of the flesh is understood in two ways. For there is a languor of nature which is called the concupiscence of the flesh, which can more truly be called an infirmity of the soul; but it is called an infirmity of the flesh for this reason, because it happens to the soul from the corruption of the flesh joined to it. Moreover, there is another infirmity which is properly called of the flesh, by which, when the harmony of the elements or humors has been disturbed, the flesh itself is afflicted and at last dissolved. § 1. Similarly infirmity of the mind is twofold: one which is called vice, by which the soul is separated from God, such as anger, hatred, and other things of this kind; another infirmity of the soul which, although it is not itself sin, is nevertheless a punishment and a cause of sin, such as forgetfulness and ignorance. But madness, although it is not sin, is nevertheless a punishment of sin, as are fever and the other passions which we properly say are of the flesh; the movements of these, that is, the things which are done while they disturb a person, are imputed to no one for punishment. § 2. But an objection is raised concerning Lamech, who, when he was blind, killed Cain, and the infirmity of blindness did not excuse him. Hence it was said: "Sevenfold vengeance shall be given for Cain; for Lamech, seventy-sevenfold." But blindness is similar to ignorance. § 3. For from each certain things are done which are imputed, but certain others which are by no means imputed. For if a blind man, believing

that he renders the debt to his own wife, defiles another woman, he is not guilty of adultery. But if, while throwing a javelin in play, in an exercise of strength, or in hunting, he kills someone, because this ought to be altogether foreign to him, he is held guilty of homicide. But a mind alienated by madness, since it is not in possession of itself, does not contract guilt for the things which it commits, because it did not have the capacity to deliberate. Hence aid is given to a ward and to a madman in cases of wrongdoing, so that things which did not proceed from mental deliberation are not imputed to them for punishment. This is known to be approved not only by human laws but also by divine laws. For Augustine says concerning little children, [in the book *On Faith to Peter the Deacon*, c. 30]:

[C. III.]

"Hold most firmly and doubt in no way that, except for those who are baptized in their own blood for the name of Christ, no man will receive eternal life who has not here been converted from his evils through penance and faith and freed through the sacrament of faith and penance, that is, through baptism; and that for adults it is indeed necessary both to do penance for their evils, to hold the Catholic faith according to the rule of truth, and to receive the sacrament of baptism; but for little children, who are not yet able by their own will to believe or to do penance for the sin which they draw by origin, the sacrament of faith, which is holy baptism, suffices for salvation so long as their age cannot be capable of reason." [GRATIAN.] But from what is said at the end of this authority —"so long, namely, as their age cannot be capable of reason"—it is evidently given to be understood that sins are imputed to no one after baptism, whether he is an adult or a minor, unless he is capable of reason. Hence concerning brute animals also the same reason is rendered by Augustine in the same book, [c. 3], why their deeds are not imputed to them: "For the animals," he says, "complete the course or adornment of the present age according to the incomprehensible will of the Creator; they will render no account concerning their deeds, because they are not rational. For is God concerned about oxen? But men, because they were made rational, will render account to God both concerning themselves and concerning all the things which they received for the use of the present life, and according to the quality of their acts they will receive either punishment or glory." Nevertheless, by the authority of sacred law animals are ordered to be killed, not because of a consciousness of sin, but because they renew the memory of the deed. Hence Augustine on Leviticus, [at c. 20, question 74]:

C. IV. The beast to which a woman approaches is killed not because of guilt but because of the memory of the deed.

"A woman who approaches any beast to be mounted by it: you shall kill the woman and the beast; let them die by death. For they are guilty." § 1. It is asked how the beast is guilty, since it is irrational and is in no way capable of law. Likewise: It is to be believed that beasts were ordered to be killed for this reason: because, contaminated by such a disgraceful act, they renew an unworthy memory of the deed. PART II. GRATIAN. But concerning madmen Augustine writes most clearly in the book *Questions of the Old and New Testament*, [question 2, at the end], saying thus:

C. V. Guilt binds a guilty person not by necessity but by will.

We know that certain persons, suddenly made insane, have harmed many with iron, a club, stones, and bites, and have even killed some; but after being captured by contrivance and brought before

judgments, they were by no means made guilty, because they did these things unknowingly, not by will but under the impulse of some force unknown to me. For how is one established as guilty who does not know what he has done?

C. VI. A guilty person is bound by will, not by necessity.

Likewise Ambrose in the *Hexaemeron*, in the tractate on the first day. Those things are to be guarded against which proceed from our will: the offenses of youth and the irrational passions of the body. Therefore, of the things whose masters we are, let us not seek the beginnings outside ourselves or divert them onto others, but let us acknowledge the things that are properly ours. Because we can refrain from doing this if we wish, we ought to ascribe the choice of this evil to ourselves rather than to others. Therefore also in judgments of this kind, guilt binds the voluntarily guilty, not those compelled by necessity; punishment condemns them. For if anyone kills an innocent person through madness, he is not liable to death; indeed, by an oracle of the divine law itself, if anyone inflicts death through imprudence, he receives hope of impunity and the possibility of refuge, so that he may be able to escape. Let this, therefore, be said concerning that which appears properly evil. For those things are not evils which neither entangle the mind in crime nor bind the conscience. Hence no wise person would call poverty, ignobility, illness, or death evils, nor would he number them in the lot of evils.

C. VII. Things which drunken persons commit ignorantly have pardon.

The same in the book *On the Patriarchs*, [c. 6 of the book *On Abraham*]. Certainly we learn that drunkenness is to be avoided, through which we cannot beware of crimes. For the things which we beware of when sober we commit ignorantly through drunkenness. § 1. Those who indulge excessively in wine do not know what they say; they lie buried, and therefore, if they have transgressed in anything through wine, they are indeed granted pardon before wise judges, but as authors they are condemned for their levity.

C. VIII. Disobedience or concupiscence has no guilt in the body of one who does not consent.

Likewise Augustine in book I of *The City of God*, [c. 25]. If concupiscence or disobedience, which still dwells in mortal members, is moved as though by its own law contrary to the law of our will, if it is without guilt in the body of one sleeping, how much more is it without guilt in the body of one not consenting?

C. IX. Lot is blamed not for incest but for drunkenness.

The same, *Against Faustus*, book II. His daughters made Lot drunk and mingled with him while he was unaware. Therefore he is indeed to be blamed, yet not so much as that incest but as much as that drunkenness merits.

C. X. No one is drawn into guilt unless led by his own will.

Likewise Ambrose, *On the Blessed Life*. There is no reason for us to ascribe our distress to anyone except our will. None of us is held to guilt unless he has turned aside by his own will. Things inflicted upon those who resist have no crime. The odium of offenses, which we divert onto others, follows only voluntary acts. Christ chose for Himself a voluntary soldier; the devil claims for himself

a voluntary servant. He possesses no one bound by the yoke of servitude unless the sinner has first sold himself to him for the bronze of sins.

C. XI. One who unwillingly commits homicide is a minister of God.

The same in the book *On Paradise*. Nor is one who has unwillingly committed a homicide outside the ministry. For the law says concerning him: "Because God delivered him into his hands." Therefore his hands, after the manner of an instrument, furnished ministry to divine vengeance. The Levite, therefore, is a minister of remission. But the striker who has committed homicide not by plan but contrary to his will is a minister of divine vengeance. § 1. Consider this also: when the impious man is killed, Christ is poured in, and where abomination is abolished, sanctification is consecrated, because the Lord said: "On that day on which I shall have killed all Israel." This is referred not to one day of the affliction of Egypt but to all time. GRATIAN. Therefore, since one who has unwillingly killed a man is a minister of God, since one who kills an innocent person in madness is by no means liable to death, and since those suddenly made insane bear no guilt for the things they do, it is evident that this priest is not guilty of homicide, and therefore he ought not to be deprived of the priesthood. § 1. But that which is found in the penitential of Theodore is objected:

C. XII. Let one who while insane killed someone do penance when restored to himself.

If anyone while insane has killed someone, if he has returned to a sound mind, a lighter penance is to be imposed upon him. GRATIAN. But perhaps this is understood concerning one whom his own fault brought to madness. § 1. Likewise it is objected: There are certain things which, even if they are not imputed to punishment, nevertheless impede the seal of the sacrament. For the ambition of parents is not imputed to the son for punishment, yet it hinders him from receiving an office of the church. Thus things done with an alienated mind, even if they are not imputed to punishment, nevertheless impede the exercise of a sacred office. Hence Jerome says:

C. XIII. One who not in anger but for discipline kills someone by accident is innocent.

If anyone, not in anger but for the sake of discipline, gives someone a blow with the palm and kills him by accident, as is accustomed to happen, in respect of grace he is innocent, because it considers the will, not the deed. But in respect of the law he is guilty, because it considers deeds. § 1. Likewise, if a virgin has been oppressed during persecution, she is rejected by the law because it looks at the deed, not the will; but in grace she is received as a virgin, because it considers not deeds but the will. GRATIAN. Therefore, just as one who commits homicide by accident for the sake of discipline is guilty in respect of the law but innocent in respect of grace, so this priest who committed homicide in madness is innocent in respect of guilt but is proved guilty in respect of the exercise of the office received. § 1. To these matters reply is thus made: Not all things which impede one who is to be ordained cast down one who has been ordained; for one who was at some time insane cannot be advanced to the priesthood. Nevertheless, if he begins to be mad after the priesthood, he will not for that reason lack the priesthood, unless perhaps it should happen that he never returns to the function of a sound mind. As Gregory writes concerning a certain bishop in the *Register* to Bishop Eleutherius: "Although it is sad for us, etc.," as above: "A bishop burdened by prolonged illness."

Question II

GRATIAN. But clerics are prohibited by the Council of Tarragona from exacting gifts for patronage furnished, in which it is read to have been established thus, [c. 10]:

C. I. A cleric ought not to exact gifts for patronage furnished.

We also decree that it is to be observed that no priest or cleric, after the manner of secular judges, dare to accept gifts for patronage furnished, except things offered freely in the church, which may appear to have been received not from favor for a gift but brought by a contribution of devotion. But if he is proved to accept things sought by him, let him know that he is to be degraded according to the statutes of the Fathers, as an exactor of interest or possessor of usury. GRATIAN. But this is to be understood concerning those who, having professed the canonical life, resolved that they would live according to the rule. For it is received by the general custom of the church and approved by usage that clerics, after the manner of advocates, furnish patronage, exact gifts for patronage to be furnished, and receive them for patronage furnished.

Question III

GRATIAN. Third, it is asked whether this man is to be condemned from the confession of the woman. In this it must first be seen whether a woman is able to accuse a priest. This appears to be altogether prohibited by the sacred canons. For it is established generally from the decrees of Pope Fabian that those who are not and cannot be of their order shall not accuse the priests of the Lord or testify against them. But women can be advanced not only not to the priesthood but not even to the diaconate; hence they can neither accuse priests nor testify against them. Provision is also made by the laws that, on account of the modesty of her sex, a woman may not intercede before the praetor for another, unless perhaps she prefers to prosecute injuries to herself or her own. But this woman, who prosecutes neither injuries to herself nor to her own, ought not to be admitted to this accusation. § 1. To the contrary, one who is able to bear the person of a judge is not removed from the office of an accuser. But whoever has read the Book of Judges cannot be ignorant that women judged the people in the Old Testament. Therefore those who are established frequently to have borne even the person of a judge cannot be removed from accusation, nor are they prohibited from accusation by any sequence of the divine Scriptures. § 2. To these matters reply is thus made: In the Old Law many things were permitted which today have been abolished by the perfection of grace. For when it was permitted to women to judge the people, today, on account of the sin which woman introduced, they are enjoined by the Apostle to show modesty, to be subject to a man, and to have a veiled head as a sign of subjection. Therefore she who by all these things is shown to be subject to a man and who is not permitted to petition for another does not appear to be admitted to accusation.

§ 3. To the contrary, although a woman is not admitted to accusation generally and indiscriminately, nevertheless there are certain crimes whose accusation a woman is not prohibited from undertaking. Hence in book IX, title 1, law 12 of the *Code*, Emperor Diocletian writes, saying:

[C. I.]

"A woman is not permitted to accuse concerning a crime which belongs to public judgments, except for certain causes, that is, if she prosecutes an injury to herself and her own, according only to the

statutes of ancient law concerning those matters which have been specially conceded to them, without the subscription being exacted. Hence the provincial governor who is approached will first examine whether the crime is such that a woman is not prohibited from undertaking its accusation."

[C. II.]

Likewise in the book of the *Digest*, Paul in book II *On Adulteries*, [title *On Witnesses*, law 18]. "From the fact that the Julian law on adulteries prohibits a condemned woman from giving testimony, it is gathered that women also have the right of giving testimony in judgment." Likewise from the title *On Accusations and Inscriptions*, law 1: § 1. "It is not permitted for a woman to make anyone a defendant in a public judgment unless, namely, she prosecutes the death of parents and children, patron or patroness, their son or daughter, grandson or granddaughter."

[C. III.]

Paul in book I *On Adulteries*. "For certain causes a public accusation has been conceded to women, as if they prosecute the death of those men and women against whom under the law they do not give public testimony unwillingly." § 1. The senate established the same thing also in the Cornelian testamentary law; but women are also permitted to speak in a public judgment concerning the testament of a paternal or maternal freedman. § 2. "It has been conceded by the testamentary law to male wards, with the counsel of their guardians, to prosecute the death of their father, and likewise to a female ward to prosecute the death of her grandfather. For the divine Vespasian permitted male wards to bring an action concerning their father's testament. But even if the tablets are not produced, they can proceed by interdict." From the *Code*, title *Who Can Accuse or Not*, the same Augustus to Dionysius: "If your wife thinks that the killing of her cousin is to be avenged, let her approach the governor of the province." From the *Digest*, at the Julian Law of Majesty, [law 8], Papinian in book XII of *Responses*: § 3. "In investigations of injured majesty, women also are heard. § 4. A woman named Julia disclosed the conspiracy of Sergius Catiline and instructed Marcus Tullius the consul concerning his trial." [GRATIAN.] But whatever person is admitted to an accusation in public judgments or of injured majesty is not prohibited from undertaking an accusation of simony. Hence in the first book of the *Code*, Emperor Leo Augustus to Armasius, Praetorian Prefect:

C. IV. Let an accusation of injured majesty, of public judgments, and of simony be proposed equally.

Indeed, whoever is discovered to have attained this holy and venerable episcopal see through the intervention of money, or if anyone is discovered to have accepted something so that he might ordain or elect another, when an accusation has been proposed after the pattern of a public crime and of injured majesty, let him be withdrawn from the priestly rank. We decree that he shall not only henceforth be deprived of honor but also condemned to perpetual infamy, so that a similar punishment may accompany both whom an equal crime stains and makes equal. GRATIAN. But when accusations which the laws of the world do not admit are altogether removed by the sacred canons, conversely those which are not prohibited by the laws of the world appear to be admissible. Yet this does not follow. For those clerics whom the sacred canons prohibit from contracting marriages are also prohibited by the laws of emperors. But it does not consequently follow that the laws admit the union of all those whose union the sacred canons do not prohibit; for by the laws only cantors and readers can take wives, but by the canons even acolytes can. Therefore, although

accusations which the laws of the world do not admit are removed by the sacred canons, whatever accusations the laws of princes admit are not therefore consequently received. § 1. But, as was premised near the beginning of this work, the laws of emperors are to be used in ecclesiastical affairs as often as they are not found to oppose the sacred canons. Hence either let the woman be shown to be specially prohibited by the sacred canons from an accusation of injured majesty and simony, or by the foregoing reasons she is proved to be admissible to an accusation of this kind. § 2. Nor let anyone seek to distinguish that in this case of simony women are to be admitted to the accusation of others but not of priests. For since this is found to be permitted to them generally by the laws, unless someone shows it to be specially prohibited by some law, his distinction will have no place. Yet, because against the general rules certain crimes are specially excepted in which a woman is permitted to accuse, among which fornication is not numbered, it is evident that her accusation is weakened in two ways: both because she alleges the crime of fornication and because, while she confesses concerning herself, she ought not to be believed concerning the crime of another. Hence Pope Julius writes, [in the decrees, c. 18], saying:

C. V. The confession of a guilty person ought not to be admitted against anyone.

It is fitting that no one who has confessed concerning himself—except concerning the crime of majesty—be believed concerning the crime of another, because the confession of him and of every guilty person is dangerous and ought not to be admitted against anyone. GRATIAN. Therefore, because this woman confesses concerning herself, she cannot be believed concerning the crime of another, but her confession is to be interpreted against her.

Question IV

GRATIAN. But that neither a bishop nor a priest is permitted to ventilate any case on Sunday is prohibited in the Council of Tarragona, in which it was established thus, [c. 4]:

C. I. Ministers of the church ought not to ventilate cases on Sunday.

Let no bishop, priest, or cleric dare on Sunday to ventilate the business proposed in any case, except only that they perform the solemn rites established for God. But on other days, when the persons have assembled, they have permission to judge the things that are just, except in a criminal matter.

C. II. Secular pleas are not to be conducted on solemn days and the days of lawful fasts.

Likewise from the council held at Erfurt in the presence of King Henry. We have decreed that secular pleas are by no means to be conducted on Sundays or other principal feasts, or also on those days on which lawful fasts are celebrated, according to canonical institution. Moreover, the holy synod has also decreed that no judicial power shall have permission by its own authority to summon Christians under ban to a plea on the aforesaid days, that is, during the seven days before the Nativity of the Lord through the octave of Epiphany, from Quinquagesima through the octave of Easter, and during the seven days before the Nativity of Saint John the Baptist, so that there may more freely be the opportunity of going to church and devoting oneself to prayers.

C. III. Concerning the same.

Likewise Pope Hadrian, [in the capitularies, c. 64]. Let no bishop or person placed beneath him presume to judge cases on Sunday.

Question V

GRATIAN. But that compurgation is to be furnished to one who denies the charge Stephen writes to Leo, Bishop of Tiana:

C. I. If a deacon cannot be convicted of a crime, let him clear himself secretly before the bishop.

Your deacon most truly declared that he was innocent of the crime charged against him. Nevertheless, if suspicion is entertained and suitable accusers and witnesses of the kind ordained by the sacred canons are found, when a fixed number of bishops has been summoned with you, let the accusers come; let the deacon Aldericus himself also be called; and if he denies it, let the case be ventilated canonically, and if he has either confessed spontaneously or been proved guilty by lawful witnesses, let him be struck by a canonical sentence. But if he neither confesses spontaneously nor lawful accusers and witnesses are found, and an evil reputation grows prevalent, let him clear himself by an oath secretly, not in a public examination, before you and several most reverend priests and deacons of your church. And thereafter proclaim him to be of good testimony, and restrain and admonish the sons of your church not to presume further to defame a priest of God, fearing that Ham, who mocked the shameful parts of his father, was accursed.

C. II. A priest or deacon is not to be despoiled unless he has confessed spontaneously or has been lawfully convicted.

Likewise Nicholas to Solomon, Bishop of Constance. A priest or deacon whom you assert to be unwilling to confess crimes publicly but to wish to defend himself with an oath—even if it is nevertheless known to the bishop that his crime was perpetrated—cannot through any penance possess the priestly or diaconal office. But it is to be wondered, if he himself has not confessed, how the crime perpetrated by him can be known to the bishop, unless perhaps a suitable accuser proves it through suitable witnesses. Hence, if, when the bishop examines the case of a priest or deacon, the priest or deacon has not perhaps been convicted by the proof of witnesses, the crime is not lawfully manifest to the bishop unless he confesses it of his own accord. Unless he does this, in the meantime we do not see that the priest or deacon ought to be deprived of his office. Therefore voluntary confession alone, and the canonical number or quality of witnesses—with the bishops deciding and the accuser proving what he alleged—deprives a cleric of his own rank.

Question VI

GRATIAN. PART I. But that a confession is not to be extorted by tortures Pope Alexander testifies, writing to all the orthodox, [letter I, c. 2]:

C. I. The confession of ministers is not to be extorted but spontaneous.

If certain writings have in any way been extorted from priests or authorities of the church through fear or fraud or through force, or if in order that they might be able to free themselves writings have by any contrivance been composed or confirmed by them, we judge that these have no force to their prejudice or injury; nor, by the authorship of God and the holy Apostles and their successors, do we permit them ever to sustain any infamy or calumny or sequestration from their goods. For confession in such matters ought to be not compelled but spontaneous. § 1. For every confession which is made from necessity is not faith. § 2. Therefore confession in such matters ought not to be extorted but professed spontaneously. For it is most wicked to judge anyone from suspicion or an extorted confession, since the Lord is the inspector of the heart more than of the deed. § 3. But one whom the Lord has reserved for His own judgment cannot be condemned by human examination. For if all things were avenged in this age, divine judgments would have no place. Likewise: § 4. This also has been reported to the holy see—which I am ashamed to say, and which is inimical not only to the priestly name but also to every Christian name—namely, that some either compel bishops or priests by fear, or extort by force, or deceive by fraud, to write certain letters of their confession toward a different side than they ought, whether for the non-investigation of their own cases or, what is worse, to make writings belonging to a sect of another's error, to confirm them with their own hands, and to recite and confess them before the people. They say that others are thrust into prisons and workhouses, so that, terrified at least by these snares, the priests of the Lord may favor their wills. Likewise: § 5. But confession in such matters ought to be not compelled but spontaneous, as He Himself testifies who says: "From the heart proceed homicides, adulteries," and the other things which pertain to these. § 6. Nor are the things which are done to be considered so much as the mind with which they are done. § 7. For God regards thoughts and spontaneous wills more than acts which are done through simplicity or necessity.

C. II. Apostolic authority renders entirely void oaths that are illicit.

Likewise Pope Nicholas to the Bishops of Gaul. Following the authority of our venerable predecessors, and by name that of the most blessed pope and martyr Alexander, fifth from blessed Peter, we absolve from all oaths and obligations of whatever kind by which those men had bound themselves when compelled by the violence of the impious; and we forbid that they be observed by both the aforesaid Archbishop of Trier and his provost and all who, being captured at that time, bound themselves to them in any way. Nor, by the authorship of God and the holy Apostles and our predecessors, do we permit them ever to sustain any infamy or calumny or sequestration from their goods on that account, just as the Lord says through the Prophet: "Loose the bonds of impiety and the other things." Indeed, we also give this by command to our aforesaid brother and the sons of the church of Trier and its defenders: that with the spiritual and material sword together they pursue those wicked men and their supporters for so long, until the possessions or whatever ecclesiastical goods were alienated or seized by this deed or by any compact are recovered in their integrity. PART II. GRATIAN. The Roman Pontiff also absolves certain persons from an oath of fidelity when he deposes some from their dignities. Hence Pope Gelasius to Emperor Anastasius:

C. III. Pontifical authority absolves certain persons from an oath of fidelity.

Likewise another Roman Pontiff—namely, Zachary—deposed the king of the Franks from the kingdom, not so much for his iniquities as because he was useless for so great a power; and he substituted Pepin, father of Emperor Charles, in his place and absolved all the Franks from the oath of fidelity. Holy church also acts by frequent authority in this way when it absolves soldiers from the bond of an oath which was made to those bishops who are deposed from pontifical rank by apostolic authority.

C. IV. Those bound to excommunicated persons are not held liable by the bond of fidelity.

Likewise Gregory VII, presiding over the Roman Synod, said: We, holding the statutes of our holy predecessors, absolve by apostolic authority from their oath those who are bound to excommunicated persons by fidelity or oath, and in every way prohibit them from observing fidelity to them until those persons come to satisfaction.

C. V. Before excommunicated persons are reconciled, no one is compelled to preserve fidelity to them.

Likewise Urban II to the Bishop of Gap. Prohibit the sworn soldiers of Count Hugh from serving him so long as he is excommunicated. If they put forward their oaths, let them be admonished that it is fitting to serve God more than men. For they are restrained by no authority from refusing to discharge to one who opposes God and His saints and tramples their commands the fidelity which they swore to a Christian prince.

Question VII

GRATIAN. PART I. That a priest is prohibited from being condemned without a synodal hearing is stated thus in the Council of Seville, at which Isidore was present, [c. 6]:

C. I. A priest or deacon is not to be cast down without the examination of a council.

In the sixth action we discovered that Fragitanus, a priest of the church of Córdoba, was once unjustly cast down by his pontiff and, though innocent, condemned to exile. Having decreed that he be restored again to his order, we further decree this against your presumption: that according to the synodal judgment of the holy Fathers, none of you shall think that any priest or deacon is to be cast down without the examination of a council. For there are many who condemn the unexamined by tyrannical power, not by canonical authority. And just as they exalt some by the favor of partiality, so they abase others by hatred and envy, and condemn by the light breeze of opinion those whose crime they do not prove. For a bishop alone can give honor to priests and ministers; he cannot alone take it away. For if those who in this age attained the honor of freedom from their lords are not returned to the bond of servitude unless they have been publicly accused before praetors in the tribunal of the forum, how much more those who are consecrated to the divine altars and adorned with ecclesiastical honor? They surely can neither be condemned by one nor be stripped of the privilege of

their honor with one man judging; but, having been presented to a synodal judgment, it is fitting that whatever the canon has commanded concerning them be determined.

C. II. Let a bishop hear cases of clerics only with the elders of the church.

Likewise Gregory to John, Bishop of Palermo, [book XI, letter 49]. Therefore, if anything concerning any cleric has reached your ears which could justly offend you, do not readily believe it, nor let an unknown matter inflame you to vengeance; but in the presence of the elders of your church the truth is to be investigated diligently, and then, if the quality of the matter demands it, let canonical severity strike the guilt of the delinquent.

C. III. By how many bishops priests or deacons are to be heard.

Likewise from the First Council of Carthage, [c. 11]. If anyone has appeared swollen with pride or contumelious toward one older than himself, or has any cause, let him be heard by three neighboring bishops if the one accused is a deacon, by six if he is a priest, and by twelve fellow bishops if he is a bishop. All the bishops said: Contumacy must be crushed and pride broken in all. But let cases be heard by these persons in the appointed number according to the persons involved.

C. IV. Concerning the same.

Likewise from the Second Council of Carthage, [c. 10]. Felix, Bishop of Selemsela, said: I also add this according to the statutes of the ancient councils: if any bishop—which we do not wish—has happened to incur some charge, and if there should be so great a necessity for him that many bishops cannot assemble, lest he remain under accusation, let him be heard by twelve bishops, a priest by six, and a deacon by three, together with his own bishop.

C. V. Concerning the same.

Likewise from the Third Council of Carthage, [c. 8]. But if priests or deacons have been accused, let their own bishop, having joined to himself from neighboring places the lawful number of colleagues whom the accused request from him—that is, together with himself six in the case of a priest and three in that of a deacon—examine their cases, with the same form preserved between the accusers and those who are accused concerning days and postponement, removal from communion, and examination of causes. But let even the bishop of the place alone take cognizance of and decide the cases of the other clerics. PART II. GRATIAN. "Alone" is said to the exclusion of other bishops, but not of his own clerics, without whose presence his sentence will be void. Hence it is read in the Fourth Council of Carthage, [c. 23]:

C. VI. Let a bishop hear no one's case without the presence of his clerics.

Let a bishop hear no one's case without the presence of his clerics; otherwise the bishop's sentence will be void unless it is confirmed by the presence of the clerics.

C. VII. Priests canonically summoned cannot be condemned except in a synod.

Likewise from the Second Council of Seville, [c. 6]. A bishop alone can give honor to priests and ministers, but he cannot alone take it away. For if those who in the world attained the honor of

freedom from their lords are not returned to the yoke of servitude unless they have been publicly accused before praetors and governors in the tribunal of the forum, how much more those who, consecrated to the divine altars, are adorned with ecclesiastical honor? They surely can neither be condemned by one nor, with one man judging, be stripped of the privileges of their honor; but, having been presented to a synodal judgment, what the canon has commanded concerning them is to be determined.

Question VIII

GRATIAN. But concerning the last question it was established thus in the Council of Neocaesarea, [cc. 9 and 10]:

C. I. Let a priest who confesses that he fell bodily before ordination not offer thereafter.

One who committed a bodily sin and afterward was ordained a priest, if he has confessed that he sinned before his ordination, indeed let him not offer, but let him remain in the other offices because of the utility of his zeal. But concerning the other sins, many have judged that he is to be deprived even of ordination. But if he has not confessed concerning these things, nor can he be manifestly convicted by any persons, the power concerning himself is to be entrusted to him. Similarly, if a deacon has been entangled in the same kind of guilt, he shall restrain himself from ministry.

C. II. If those serving the altar transgress through the frailty of the flesh, they shall be subject to the judgment of the bishop.

Likewise from the Council of Lleida, [c. 5]. If those who serve the altar of God suddenly fall into the lamentable frailty of the flesh and, with God regarding them, worthily repent, so that with the body mortified they offer to God the sacrifice of a contrite heart, let it remain within the power of the pontiff either not to suspend for long those who are truly afflicted, or to segregate the slothful from the body of the church for a more prolonged time; nevertheless, in such a way that they resume the places of their offices so that they cannot afterward be advanced to higher offices. But if a second time, like dogs returning to vomit, they have turned back, let them not only lack the dignity of office but also not receive holy communion except at their departure.

C. III. Let those begotten from ministers of the church be consigned to its servitude.

Likewise from the Ninth Council of Toledo, [c. 10]. Although many judgments of the Fathers concerning the innocence of the order of clerics have hitherto issued and correction of their morals could in no way be effected, the offenses of their faults have drawn out the sentence of those judging to such an extent that vengeance should be brought not only upon the perpetrators of crimes but also upon the progeny of the condemned. And therefore, if from this point forward anyone from a bishop down to a subdeacon, while established in honor, begets children in a detestable union either from a female slave or from a freeborn woman, those from whom they are proved to have been begotten shall indeed be condemned by canonical censure; but the offspring born from another's pollution shall not only never receive an inheritance, but shall also remain by perpetual right in the servitude of that church from the disgrace of whose priest or minister they were born.

C. IV. One who confesses that he sinned before ordination shall not sacrifice; but one convicted shall be deposed.

Likewise from the Council of Pope Martin, [c. 35]. If any priest sinned before ordination, let him not offer, but let him bear the name of priest only for the sake of religion. But if he himself did not confess but was publicly convicted by another, let him not have even this, that he bear the name of priest. The same is to be observed concerning deacons, so that if they themselves have confessed, they shall receive the order of subdeacon.

C. V. Sacraments are lawfully received from the hand of a priest who is tolerated by the church.

Likewise Nicholas in the responses to the Bulgarians, [c. 71]. When you ask whether you ought to receive communion from a priest who has been caught in adultery or merely besprinkled by rumor concerning it, we respond: No one, however polluted he may be, can pollute the divine sacraments, which exist as purgatives of all contagions. For whatever sort the priest may be, the holy things cannot be defiled. Therefore communion is to be received from him until he is rejected by the judgment of the bishops, because evil men, by ministering good things, harm only themselves; and a burning waxen torch indeed causes loss to itself, but ministers light to others in darkness, and from that from which it furnishes benefit to others it provides loss to itself. § 1. Therefore receive the mysteries of Christ fearlessly from every priest, because all things are purified in the faith of Christ. For it is faith which conquers this world; and because faith belongs not to the giver but to the receiver, as blessed Jerome says: "For believing, baptism is perfect for every soul, and in every priest the body is perfect." He again, agreeing with sacred Scripture, says: "Before you hear, do not judge anyone"; and before proof of the accusation brought, suspend no one from your communion, because not everyone who is accused is immediately guilty, but he who is convicted is criminal.

Causa XVI

GRATIAN. A certain abbot had a parochial church; he instituted a monk there to celebrate the office for the people; he possessed it for forty years without any challenge. At last a complaint is raised against the abbot by the clerics of the baptismal church in whose diocese that parochial church was situated. (QUESTION I.) Here it is first asked whether monks are permitted to celebrate offices for peoples, give penance, and baptize. (QUESTION II.) Second, if it should happen that they have chapels by episcopal benefice, whether they are to be instituted by them or by the bishops. (QUESTION III.) Third, whether the rights of churches are removed by prescription. (QUESTION IV.) Fourth, if a church prescribes against a church, whether a monastery also can prescribe against a church. (QUESTION V.) Fifth, whether it is able to claim for itself by territorial right a chapel built in its territory. (QUESTION VI.) Sixth, if an archpriest or bishop, by his own authority and not by a judicial sentence, has usurped that chapel, whether he falls from the cause, so that the church over which he presides no longer has the right to reclaim what its pastor illicitly usurped. (QUESTION VII.) Seventh, it is asked: if laymen held that chapel, as is the custom of certain persons, and resigned it into the hands of the abbot and delivered it to be ordered, whether with the consent of the bishop and clerics the abbot can hold it.

Question I

GRATIAN. PART I. That monks cannot celebrate offices for peoples is proved by many authorities, the first of which is that of the holy Synod of Nicaea, in which it is said:

C. I. The manner of life of monks ought to be separate from all.

It pleased all those sitting in the holy Synod of Nicaea that the manner of life and conduct of monks differ from all according to the etymology of the name. For *monachus* in Greek means "solitary" in Latin, whence it is fitting that a monk act solitarily in all things. Therefore we command all firmly and inviolably that no monk give penance to anyone except mutually, as is just; that he not bury a dead person unless a monk dwelling with him in the monastery, or unless by chance it should happen that one of the visiting brothers dies there.

C. II. No one can simultaneously maintain the discipline of a monastery and an ecclesiastical ministry.

Likewise Gregory to John, Archbishop of Ravenna, [book IV, letter 1]. No one can serve ecclesiastical duties and persist in an ordered manner in the monastic rule, so that the same person maintains the discipline of the monastery who is compelled daily to remain in an ecclesiastical monastery.

C. III. Monks who are advanced to the clerical state ought not to depart from their former purpose.

Likewise Innocent, [to Victricius, letter II, c. 10]. Concerning monks who, after remaining for a long time in monasteries, later attain the orders of the clerical state, we establish that they ought not to depart from their former purpose. GRATIAN. Therefore, if, as Innocent determines, they are not permitted to depart from their purpose, and, as Gregory testifies, they cannot both persist devotedly in the monastic rule and serve ecclesiastical duties, it is evident that monks cannot be placed over parochial churches.

C. IV. A monk has the office not of one teaching but of one mourning.

Likewise Jerome to Riparius and Desiderius. A monk has the office not of a teacher but of one mourning, who mourns either himself or the world and awaits the advent of the Lord in fear.

C. V. Monks ought not to be amid a popular multitude.

The same to Paulinus, [*On the Formation of a Monk*, letter XIII]. If you desire to be what you are called —a monk, that is, alone—what are you doing in cities, which indeed are not habitations of solitary persons but of many? And below: § 1. Have the simplicity of a dove, lest you devise deceits against anyone, and the cunning of a serpent, lest you be supplanted by the snares of others. It does not differ greatly in vice either to be able to deceive or to be deceived. Regard a Christian whom you perceive to speak to you always or frequently about coins as a trader rather than a monk, excepting alms, which are open indiscriminately to all. Beyond food, clothing, and manifest necessities, bestow nothing upon anyone, lest dogs eat the bread of the children.

C. VI. A monk is fed; clerics feed.

The same to Bishop Heliodorus. The case of a monk is one thing, that of a cleric another. Clerics feed the sheep; I am fed. They live from the altar; the axe is placed as though at the root of an unfruitful tree for me if I do not bring a gift to the altar. § 1. I am not permitted to sit before a priest. If I sin, he is permitted to hand me over to Satan for the destruction of the flesh, so that the spirit may be saved on the day of the Lord.

C. VII. Monks are not permitted to do anything without the counsel of priests.

The same to Rusticus. The church has a senate, the assembly of priests, without whose counsel monks are permitted to do nothing. Rehoboam, son of Solomon, lost the kingdom for this reason: because he was unwilling to hear his priests. The Romans also had a senate, by whose counsel they did all things; and we have our senate, the assembly of priests.

C. VIII. According to the etymology of the name, let a monk lead a solitary life.

Likewise Pope Eugene. It pleased our common council that no monk presume with most wicked daring to depart from the monastery for earthly gain, nor give penance, nor receive a son from baptism, nor baptize, nor visit a sick person, nor bury a dead person, nor pass over to a secular church, nor entangle himself in transactions of any kind. Let him be content with his cloister, because, just as a fish lacks life without water, so does a monk without a monastery. Therefore let him sit solitary and be silent, because he is dead to the world but lives to God. § 1. Let him recognize his name, for *monos* in Greek is "one" in Latin; *agos* in Greek is "sad" in Latin. Hence he is called a *monachus*, that is, "one sad man." Therefore let him sit sad and attend to his office.

C. IX. Let monks not usurp episcopal rights without the consent of bishops.

Likewise Paschal II to Victor, Bishop of Bologna. It has reached us, concerning which we greatly wonder, that certain monks and abbots in your parish arrogantly claim for themselves episcopal rights and offices contrary to the decrees of the holy Fathers—namely, penance, remission of sins, reconciliation, tithes, and churches—when without the permission of their own bishop or the authority of the apostolic see they ought in no way to presume this, as provision concerning matters of this kind was made by the holy Fathers in the Council of Chalcedon and prohibited to all monks under the bond of anathema. Therefore we command your Dilection that you convene them and altogether prohibit them from presuming such things thereafter.

C. X. Concerning the same.

Likewise Pope Callistus [II]. We also interdict abbots and monks from giving public penances, visiting the sick, performing anointings, and singing public Masses. Let them receive chrism and oil, consecrations of altars, and ordinations of clerics from the bishops in whose parishes they remain.

C. XI. Let monks remaining within cloisters not administer the offices of clerics outside.

Likewise Alexander II. According to the tenor of the excellent Council of Chalcedon, we command monks, although religious, to remain within the cloister according to the rule of Saint Benedict; we prohibit them from traversing villages, castles, and cities; we have judged that they are altogether to cease from preaching to peoples, unless perhaps someone, solicitous for the salvation of his soul, should wish to consult them within the cloister in order to assume their habit.

C. XII. Monks who are in cities ought to be subject to the bishop.

Likewise from the Council of Chalcedon, [c. 4]. Those who truly and purely choose the solitary life are worthy of suitable honor. § 1. But those who are in monasteries throughout the several cities or estates, it pleases us that they be subject to the bishop, devote themselves to quiet, and observe fasts and prayers, remaining in the places in which they once devoted themselves to God; and that they neither take part in ecclesiastical actions nor handle any secular actions, leaving their own monasteries, unless perhaps they are ordered by the bishop of that city on account of urgent necessities. And let no one's slaves be received into a monastery so that one may be a monk with them except with the permission of his own lord. But we have decreed that one who transgresses these things be outside communion, lest the name of the Lord be blasphemed. § 2. But it is fitting that the bishop of the city furnish necessary care and solicitude to the monasteries. GRATIAN. To these matters reply is thus made: That authority of the Synod of Nicaea prohibits monks from leaving their monasteries and celebrating the burials of the dead throughout chapels, namely from assembling after the manner of clerics to celebrate the obsequies of anyone. But if anyone wishes to be buried at a monastery, he is not to be prohibited. Hence Gregory writes to John, Bishop of Civitavecchia, [book I, letter 12]:

C. XIII. Let the celebration of Masses and burial of the dead in a monastery not be prohibited.

Abbot Agapitus of the monastery of Saint George informed us that he sustains many burdens from your Holiness, because you prohibit Masses from being celebrated in the same monastery and also interdict the dead from being buried. We exhort you to refrain from this inhumanity and to permit the dead to be buried there and Masses to be celebrated without any further contradiction.

C. XIV. The pious wills of the deceased are not to be annulled.

The same to Venerius, Bishop of Cagliari, [book III, letter 9]. We wish to admonish you lest the pious wills of the deceased be annulled by your neglect—which God forbid.

C. XV. The judgment of the testator ought to be observed.

Likewise Gelasius. Consideration of ecclesiastical utility demands this: that by a just dispensation the judgment of the testator is to be observed.

[C. XVI.]

Likewise from the Council of Tribur, [c. 15]. Wherever resources and the suitability of the times suffice, etc. As is read above in the same chapter in the cause of those who passed from diocese to diocese. GRATIAN. Behold, from these authorities it is evident that, if anyone wishes to choose

burial for himself at a monastery, he can freely be buried by the monks. Hence it is clearly gathered that that prohibition of the Synod of Nicaea was made because of the dishonesty of those wandering about. Hence it is said in the Council of Chalcedon, [c. 23]:

C. XVII. Let monks who wander without the permission of the bishop be compelled to return to their own places.

Certain monks who have had nothing enjoined upon them by their own bishop—and sometimes even those who had been excommunicated by him—come to the city of Constantinople, bring disturbances upon ecclesiastical tranquility there, and corrupt the houses of various persons. Therefore this holy synod has established that they first be admonished to depart from the imperial city; then that they be cast out unwilling and compelled through the defender to reach their own places.

C. XVIII. Monks wandering about are to be compelled through the defender.

Likewise Pope Pelagius to Paulinus the Solitary. We command John the Defender that he ought to detain Probinus of Sabaria, Milianus and Probianus, or other false monks, so that, if they desire to know any account of their contention, they ought to be presented to us to be instructed. Certainly, if they have been severed from the ecclesiastical body by obstinacy alone, we have judged that it is to be enjoined upon the aforesaid defender that they be exiled on the island of Rieti, as you requested.

C. XIX. Let no monk except the priests of the Lord dare to preach.

Likewise Pope Leo, [to Theodoret, Bishop of Cyprus, letter LXI, otherwise LXIII]. We also add that which you commanded us by word through our vicars because of the dishonesty of certain monks of your religious body, specially establishing this: that no one except the priests of the Lord dare to preach, whether he be a monk or a layman who boasts in the name of any knowledge. GRATIAN. Behold, in this chapter both the vice is expressed and it is annulled by a general constitution. But the fact that a monk is prohibited from giving penance arises from this: that none of the priests is permitted to bind or loose the parishioner of another. But monks, even if at the dedication of their priesthood, just as the other priests, they rightly receive the power of preaching, baptizing, giving penance, remitting sins, and enjoying ecclesiastical benefices, so that they may do more fully and perfectly the things which are proved by the constitutions of the holy Fathers to belong to the priestly office, nevertheless do not have the exercise of their power unless they have been elected by the people and ordained by the bishop with the consent of the abbot. But they are prohibited from handling ecclesiastical and secular actions, so that they do not presume for themselves patronage of cases unless they have been admonished by the bishop, and are not occupied by secular cases so that they sit as cognitors for the deciding of disputes. Hence Pelagius writes to the patrician Antonina and Decia:

C. XX. A monk ought not to be made a defender.

Concerning the bearer of the present letters, let there be no distress of mind to you because he was not made a defender, since I regard it as altogether exceedingly bitter that men be led from that purpose to an office in which the things promised to God by monks can in no way be fulfilled. For there is every kind of difference between that habit and this office. There are quiet, prayer, and labor

of the hands; but here there are the cognizance of causes, summonses, legal proceedings, public litigations, and whatever ecclesiastical institutions or the necessity of petitioners demands. But may God bring it about that those who either are nurtured by us in that habit or grow in monasteries may be such that, at an advanced age and with a proven life, they may be able to be advanced not to offices of litigation but to the priesthood. GRATIAN. Nevertheless Gelasius, as is found in the tractate on the promotions of clerics, in that chapter "A novice monk, etc.," permits them to be made defenders by dispensation. PART II. But that they possess the power of priestly offices Ambrose testifies, saying:

C. XXI. Let monks who are priests not be prohibited from celebrating the offices of clerics.

We commend by a moderate dispensation that learned and upright monks dedicated with the honor of the priesthood ought to preach, baptize, give penance, remit debts to the wretched, and enjoy a just portion of tithes, first fruits, and offerings of the living and the dead, so that, according to the Apostle, living from the altar which they serve, through service to the Lord's people they may transform bread and wine by an immaculate blessing into the body and blood of our Lord Jesus Christ.

C. XXII. Let a monk who is a priest freely enjoy ecclesiastical benefices.

Likewise Pope Innocent. If a monk is advanced to the clerical state, let benefices, provisions, and tithes be granted to him fully, without any diminution or delay, so that, as well as he can according to his ability, when necessity arises, he may furnish aid for ecclesiastical works and for restoring the church itself.

C. XXIII. Concerning the same.

Likewise Gregory. By the governance of apostolic authority we decree that monks, if they have been dedicated with the honor of the priesthood, together with the power of binding and loosing may laudably claim for themselves, by a just canon and no less than other priests, a portion of tithes, first fruits, offerings, and donations which are made for the living and the deceased, for their own utility and that of their neighbors by the merit of a more perfect justice.

C. XXIV. Let monks who are priests freely administer the offices of clerics.

The same. By the authority of this decree, which has been established by us through apostolic governance and the office of piety, let priest-monks who bear the figure of the Apostles be permitted to preach, baptize, give communion, pray for sinners, impose penance, and loose sins.

C. XXV. Monks adorned with the honor of the priesthood have the power of binding and loosing.

Likewise from the decree of Pope Boniface. There are some persons supported by no teaching who assert most audaciously, inflamed by a zeal of bitterness rather than of charity, that monks, because they are dead to the world and live to God, are unworthy of the power of the priestly office and cannot grant either penance or Christianity or absolve through the power divinely enjoined upon them by the priestly office. But they err altogether. § 1. For neither was blessed Benedict, the

beneficent teacher of monks, in any way a prohibitor of a matter of this kind; rather, he decreed only that they would be free of secular transactions. This indeed is greatly commanded by apostolic documents and the institutions of all the holy Fathers not only to monks but also to canons. "For no one serving as a soldier for God entangles himself in secular transactions." § 2. Therefore, instructed by the examples of so many Fathers, whom it is exceedingly dangerous to oppose, we believe that the office of binding and loosing is worthily administered by God working through priest-monks, if it should happen that they are worthily elevated to this ministry. § 3. Therefore, as for those striving to restrain priests of monastic profession from the office of priestly power, we command in every way that they be restrained from attempts of this kind hereafter, because the more elevated anyone is, the more powerful he will be in these matters. GRATIAN. By all these authorities it is plainly shown that monks can give penance, baptize, and lawfully administer the other priestly offices. But that they are able to exercise their power by election of the people, institution of the bishops, and consent of the abbot is proved by the authority of Jerome, Gelasius, and Gregory. For Jerome says to Rusticus the Monk, [letter IV]:

C. XXVI. One living worthily in a monastery can be advanced to the clerical state through election of the people.

Live in the monastery in such a way that you may merit to be a cleric. § 1. Learn for a long time the things which you may afterward teach, and among good men always follow those who are better. But if the people or the bishop elects you as a cleric, do the things which belong to clerics.

C. XXVII. Monks can be advanced into the order of the clerical state.

The same to the same, [in the same letter above]. If desire for the clerical state tickles you, learn what you can teach and offer a rational sacrifice to God, lest you be a soldier before a recruit, lest you be a master before a disciple. § 1. It does not belong to my humility or measure to judge concerning others and to say anything sinister concerning ministers of churches. Let them possess their own order and rank; if you hold it, the book published to Nepotian will be able to teach you how you must live in it. § 2. Now we discuss the cradle and conduct of a monk, and of that monk who, educated in the liberal studies, placed the yoke of Christ upon his neck in adolescence. And first it must be treated whether you ought to live alone or with others in a monastery. It pleases me that you have the companionship of holy men, that you do not teach yourself, and that you not enter without a teacher upon a way which you have never entered.

C. XXVIII. In the place where the abbot shall judge, let a monk be chosen and ordained priest by the bishop.

Likewise Pope Gelasius. If there shall be any monk who, by the merit of a venerable life, is foreseen to be worthy of the priesthood, and the abbot under whose command he serves Christ the King shall request that he be made a priest, he ought to be chosen by that abbot and ordained in the place where the abbot shall judge, providently and justly performing all things that pertain to the priestly office, whether by election of the people or of the bishop.

C. XXIX. At the time of maturity monks are to be promoted to ecclesiastical orders.

Likewise Pope Siricius, [to Himerius, letter I, c. 13]. We both desire and will that monks whom gravity of conduct and a holy formation of life and faith commend be joined to the offices of clerics, in such a way that those under thirty years of age who are worthy are promoted in the minor orders, advancing through the individual grades with the passage of time, and thus arrive at the insignia of the diaconate or priesthood through consecration at mature age; nor are they to ascend by a leap to the summit of the episcopate unless the same periods which we prescribed above for the individual dignities have been observed in their cases.

C. XXX. Let monks neither undertake ecclesiastical offices with greedy exaltation nor reject them through flattering idleness.

Likewise Augustine to Eudoxius, [letter LXXXI]. But we exhort you, brothers, in the Lord, to preserve your purpose and persevere to the end; and if mother church shall desire any works of yours, neither undertake them with greedy exaltation nor reject them through flattering idleness, but obey God with a meek heart, bearing with gentleness Him who rules you, who directs the meek in judgment, who teaches the gentle His ways. Nor prefer your leisure to the necessities of the church; for if no good persons wished to minister to her as she labors in childbirth, you would not find how you might be born.

C. XXXI. Gelasius commands that a certain monk Rufinus be made a priest and ordained in a certain basilica.

Likewise Pope Pelagius to Bonus, Bishop of Sabina. We have learned that in your parish the office of priest is lacking at the basilica of Saint Lawrence, which was founded on the possession of our son and counselor, the magnificent man Theodore. And because our aforesaid son reported to us that he had found a certain monk Rufinus, long approved by him in life and conduct, and requests that this man be consecrated priest there—which we did not agree should be done suddenly without the prescribed observance—for that reason, when your belovedness has received these things, let it cause him to be made a deacon on the coming Saturday; and, if God wills and we live, we shall make him a priest in the middle of the week, so that, when the paschal solemnity arrives, the sacred mysteries may be fulfilled in the aforesaid basilica by a suitable person.

C. XXXII. One who becomes a monk from being a cleric can be chosen and consecrated when his own bishop ordains him.

Likewise Gregory in the *Register*. If it happens that any persons come from the clerical state to the monastic way of life, if a monk shall be of such a life that the bishop whom he had previously served foresees him to be worthy of the priesthood, he can be chosen and ordained in the place where the bishop shall judge.

C. XXXIII. Without the testimony of the abbot, monks are not to be chosen for the clerical office.

Likewise from the Council of Agde, [c. 27]. Wandering monks are not to be ordained to the clerical office, either in parishes or in cities, unless their abbot shall have given testimony for them. § 1. For if

it shall be necessary that a cleric be ordained from among the monks, let the bishop presume to do so with the consent and will of the abbot.

C. XXXIV. With the abbot's will, let those monks be ordained whom the bishop wishes to ordain for the utility of the church.

Likewise from the Council of Lleida, [c. 3]. When, for the utility of the church, the bishop shall have approved that some of the monks ought to be promoted to clerical office, they ought to be ordained with the will of the abbot. But those things which are offered from resources under the right of the monastery are in no respect to be touched by the bishops under diocesan law.

C. XXXV. Without the abbot's command, monks are not to presume to celebrate ecclesiastical ministries.

Likewise from the Council of Tarragona, [c. 11]. We forbid monks going outside the monastery to presume to perform any ecclesiastical ministry, except perhaps at the abbot's command. Likewise, let none of them—that is, of the monks—be an undertaker or executor of external business, except that which the utility of the monastery demands, with the abbot nevertheless commanding him.

C. XXXVI. Deserters of monasteries are not to be chosen for clerical service.

Likewise Augustine to Aurelius, [letter LXXVI]. I read the letter of your kindness concerning Donatus and his brother, and for a long time I wavered over what I should answer. Yet, upon considering again and again what is useful for the salvation of those whom we serve by nourishing them in Christ, nothing else could occur to me except that a way is not to be given to servants of God by which they might think themselves more easily chosen for something better if they shall have become worse. For a fall becomes easier for them, and a most unworthy injury is done to the order of clerics, if deserters of monasteries are chosen for clerical service, since from those who remain in the monastery we are accustomed to take into the clergy only the more approved and better men—unless perhaps, just as common people say, "A bad flute-player is a good symphonist"; in the same way those same common people will jest about us, saying, "A bad monk is a good cleric." It is exceedingly to be lamented if we raise monks up to such ruinous pride and deem clerics, among whose number we are, worthy of such grave insult, since sometimes even a good monk scarcely makes a good cleric if sufficient continence is present in him but necessary instruction or the integrity proper to his person is nevertheless lacking. But concerning these men, I believe your blessedness judged that they had departed from the monastery with our will, so that they might instead be useful to those of their own region. But this is false: they went away of their own accord, they deserted of their own accord, while we resisted as much as we could for the sake of their salvation. PART III. GRATIAN. By all these authorities it is shown that monks who have been elected by the people and ordained by the bishop with the consent of their abbot can lawfully exercise their power. But that statement of Gregory, "No one can serve ecclesiastical duties, etc.," is to be understood of those who, having been ordained among the cardinals or bishops, contend that the administration of their monastery is to be reserved to themselves. Hence the same Gregory writes to Marinianus, Bishop of Ravenna, [book VI, letter 40]:

C. XXXVII. Monasteries are not to be burdened because of the promotion of an abbot or monk.

Lest monasteries perhaps sustain some burden because of the promotion of any monk or abbot, it must be our care that, if any of the monks from any monastery shall advance to a clerical office or sacred order, he is thereafter to have no power there.

C. XXXVIII. Those who serve churches in any manner cannot be abbots.

The same to Maximianus, Bishop of Syracuse, [book III, letter 11]. Do not permit priests, deacons, and others of any order who serve churches in any manner to be abbots in monasteries; but either, having undertaken clerical service, let them not be promoted to monastic ranks, or, if they have resolved to remain in the place of an abbot, let them by no means be permitted to have clerical service. For it is sufficiently incongruous if, when someone cannot diligently fulfill one of these because of its magnitude, he is considered suitable for both. GRATIAN. This can be understood to have been said either generally or by a special privilege, just as this is also read concerning a certain monastery in the *Register* of Gregory:

C. XXXIX. Concerning a certain hospice whose abbot is forbidden to be chosen for the episcopate.

Hence it is also that, desiring to free from the perversity of evil persons a hospice or monastery established in the same kingdom of the Franks, because it was being managed uncanonically through the ambitions and contentions of certain persons, he commanded that no abbot ever be introduced there by any surreption without royal provision and the election of the monks. He also commanded that the abbot of the same monastery should never be chosen for the episcopate, lest perhaps the abbey suffer some detriment by occasion of the episcopate. This privilege belongs to that church in such a way that it can by no means give a common law to kings or abbots. For what is conceded individually to one does not immediately befit all. GRATIAN. By the preceding authority abbots are not forbidden to be made priests, since blessed Benedict commands the abbot to give a blessing to brothers departing and returning, which belongs to priests alone. He likewise assigns to the abbot the reading of the Gospel lesson, and to read it with the prayer that follows is similarly an act of the priestly office. But he forbids such men to be made priests or deacons as are compelled to remain continually in ecclesiastical service. § 1. Likewise, those statements of Jerome to Riparius and Desiderius, "A monk has the office not of teaching but of mourning"; and to Heliodorus, "The condition of a monk is one thing, that of a cleric another"; and to Rusticus, "Without the counsel of priests monks are permitted to do nothing," are not to be understood so generally that no monk is permitted to undertake the office of teaching, lest we be compelled to deny that blessed Gregory, or Augustine, bishop of the English, or also blessed Martin, and innumerable others whom Scripture testifies were promoted from the monastic way of life to the highest grade of the priesthood, possessed the office of teaching; or lest we assert that on the day of their consecration they departed from their former purpose, which, as Innocent testifies, no one is permitted to do. Therefore Jerome wished to distinguish between the person of a monk and of a cleric, showing what befits each from his proper office. § 2. For one thing befits each insofar as he is a monk, another insofar as he is a cleric. Insofar as he is a monk, he has the office of lamenting his own sins and those of others; insofar as he is a cleric, of teaching and feeding the people. § 3. But ecclesiastical history testifies that until the time of Eusebius, Zosimus, and Siricius, monks were simply monks and not clerics. Jerome

himself also relates that the monks of Scythia came together as one in order that they might find a priest for themselves who would celebrate for them the solemnities of the Masses.

C. XL. All clerics or monks ought to have immunity from guardianship.

Likewise Emperor Leo, [book I of the Code, title *On Bishops and Clerics*, law 51]. We decree generally that all most reverend bishops, as well as priests or deacons and subdeacons, and especially monks, although they are not clerics, have by the law itself immunity from every guardianship, whether testamentary, statutory, or assigned; and that they are not only exempt from guardianship but also from curatorship, not only of wards and minors but of a madman, a mute, a deaf person, and other persons to whom guardians or curators are given by the ancient laws. § 1. Nevertheless, we decree that those clerics and monks have a benefit of this kind who remain attached to the sacrosanct churches or monasteries, neither wandering nor idle concerning the divine ministries, since we grant them this benefit for this very reason: that, having abandoned all other things, they may cleave to the ministries of almighty God. § 2. And we decree that this shall obtain not only in old Rome or in this royal city, but in every land wherever the Christian name is worshiped. GRATIAN. § 3. They also received immunity from new assessments and base public burdens. Hence Constantine writes to all clerics, [in the same title, the first law]: "According to the enactment which you are said to have merited long ago, no one shall bind your lands and slaves to new assessments, but you shall enjoy exemption." Likewise Emperors Honorius and Theodosius, [in the same book, title *On the Sacrosanct Churches*, law: § 4]: "It pleases us, after the tenor of a reasonable counsel has been weighed, to prescribe by strict moderation from which necessities especially the churches of the individual cities are to be held immune. First, indeed, the insult of that usurpation must be repelled, lest estates dedicated to the uses of the heavenly mysteries be vexed with the dregs of base public burdens; henceforth let nothing extraordinary or additionally imposed be demanded, let no obligation of transport be assigned, and finally let nothing be ascribed to their public obligations beyond the canonical payment, except what a sudden burden of an unforeseen necessity shall have demanded. If anyone contravenes this, after the severity of the penalty due—which is lawfully to be brought forth against the sacrilegious—let him be consumed by exile in perpetual deportation." [GRATIAN.] The same is given to be understood from the words of blessed Sylvester, who, assigning the obedience of inferiors toward superiors, says: "Let the abbot be subject to the doorkeeper, the monk to the abbot," above in the tract on those to be ordained. Jerome therefore shows that monks simply as such are permitted to do nothing without the counsel of priests. Nor are they permitted to assume the office of teaching for themselves without the authority of clerics, except perhaps when inwardly admonished by divine grace, as blessed Gregory relates in the dialogue concerning blessed Benedict, who brought the people of Monte Cassino to the faith and overthrew the altar of Apollo which had been erected there; and concerning a certain Equitius, to whom an angel appeared in dreams and sent him to preach; and when he complained of a defect of his tongue, the angel touched his tongue with a lancet and cured that entire defect. § 1. But Jerome's numbering himself among such persons is like that statement of the Apostle to the Philippians, "As many of us as are imperfect, let us think this," numbering himself among the imperfect. Hence the same Jerome says elsewhere, "Born in a poor house and rustic hut." And below: "We, laden with gold," numbering himself, who was hungry, among those who disdain honey, and himself, who was poor, among the rich, above where clerics who do not wish to relinquish their own property are treated, in the chapter "The glory of a bishop."

§ 2. Behold, it has been sufficiently shown that monks adorned with the honor of the priesthood, elected by the people, and instituted by the bishop are permitted the same things as other priests. This is also proved from the similarity of consecration. For one thing is not said in their consecration and another in the consecration of others. For the bishop earnestly asks that a blessing be poured out by the Lord upon both in common. And when he consecrates, he says individually to all priests: "May these hands be consecrated and sanctified, O Lord, so that whatever they shall consecrate may be consecrated, and whatever they shall bless may be blessed." Behold, the blessing is common. Whence, then, the separation between them? Therefore, just as in the blessing both obtain a common power, so in institution they commonly attain the exercise of that power. § 3. But without the permission of bishops, the exercise of power is forbidden not only to monks but also generally to all clerics. Hence Clement, [letter III]:

C. XLI. Priests are not to perform priestly offices without the permission of the bishops.

It must be attended to by all the faithful and especially by all priests and deacons and the other clerics that they do nothing without the permission of their own bishop; certainly let no priest celebrate Masses in his parish without his command, nor baptize, nor do anything without his permission. PART IV. GRATIAN. But concerning those who remain within the cloisters of a monastery, to whom a people is not committed to be governed, it is asked whether they ought to give or receive tithes. In their case this distinction is to be observed: that from fields and vineyards which are cultivated for their own maintenance they retain the tithes for themselves. For if tithes were rendered by the people to the sons of Levi for the ministry by which they served the Lord in the tabernacle, offering sacrifices and burnt offerings for the people, it is evident that monks are no more compelled to pay tithes from their own estates than are other priests. § 1. But it is said that the estates of monks, whether bought for a price or offered for the salvation of souls, used to pay first fruits and tithes to baptismal churches or to any other churches before they came under the monks' right, and those churches cannot be deprived of their right. Hence it is found to have been enacted at the Council of Mainz:

C. XLII. One who shall have assigned his property to anyone cannot take the revenue from tithes away from the former church.

If any layman or cleric, or person of either sex, shall have assigned places or property belonging to him to anyone, he is to have no power to withdraw from that property the revenue from tithes lawfully assigned to the former church. But if he shall attempt to do this, let such a conveyance be deemed wholly void, and let him be constrained to amendment by ecclesiastical censure.

C. XLIII. Older churches are not to be deprived of either tithes or any possession.

Likewise from the Council of Chalon. Churches established in ancient times are not to be deprived of either tithes or any possession, so that they are given to new oratories.

C. XLIV. Older churches are not to lose their right because of new ones.

Likewise from the Council of Worms. Whoever shall wish to build a church on his own property, and shall have the consent and will of the bishop in whose parish it is, is permitted to do so. Nevertheless, the bishop must take care in every way that other, older churches do not lose their

right or tithe because of new ones, but that these are always paid to the older churches. GRATIAN. But Leo IV affirms that tithes are to be paid to baptismal churches, saying:

C. XLV. Tithes ought to be given to baptismal churches.

Concerning tithes, it seemed justly not only to us but also to our predecessors that they ought to be given only to the parishes where sacrosanct baptisms are administered. GRATIAN. Therefore, if no one is permitted to withdraw the revenue from tithes from the former church to which it had been assigned; if the right of an older church is not to be given to new ones; if tithes are to be given only to baptismal churches: it is evident that monks are compelled to give tithes from their own estates. But that authority of the Council of Mainz speaks of a seller or donor, determining that he who sells or gives cannot take the revenue from tithes away from the church to which it had previously been lawfully assigned. Monks, however, retain tithes and first fruits not by the authority of the seller or donor but by the authority of the same council and Pope Paschal, by whom it was determined that monks do not pay tithes from their own estates. For thus it was enacted at the Council of Mainz:

C. XLVI. Abbots and bishops are not to pay tithes from their own estates.

Moreover, certain brothers complained that there were some bishops and abbots who did not permit tithes to be given to the church where their tenants hear Mass. Accordingly, this sacred assembly decreed that bishops and abbots are to cause tithes from the fields and vineyards which they have for the maintenance of themselves and their brothers to be brought to their own churches, but that their households are to give their tithes where their infants are baptized and where they hear Masses throughout the whole course of the year.

C. XLVII. Monks and canons are by no means to be compelled to pay tithes from their own labors.

Likewise Paschal II. The authority of divine law decreed that tithes are to be rendered by the people to priests and Levites. But no reason permits soldiers, bishops, or any persons whatsoever to extort tithes from monks or clerics living in common out of their own labors or sustenance. Hence blessed Gregory says thus: "For those living a common life, what will there be for us to say now concerning the making of portions, or the furnishing of hospitality, and the fulfilling of mercy?" since everything that remains is to be expended on pious and religious causes, as the Lord says: "Give what remains as alms, and behold, all things are clean for you." PART V. GRATIAN. But the statement that older churches are to be deprived neither of tithes nor of any possession because of new ones is not to be understood in such a way that it is believed in no way permissible for a bishop to grant for a time some part of the possessions or tithes of one church to another. For just as the Pope can unite two episcopates into one, so one episcopate can, with the consent of its own bishop, be divided into two; or even any church can, against the will of the metropolitan, be exempted from his jurisdiction by apostolic authority. Hence Pope Gregory writes to Bishop Benenatus, chapter XXV:

C. XLVIII. Two episcopates can be united into one by apostolic authority.

Both the quality of the time and the proximity of the places invite us to unite the churches of Cumae and Misenum, since they are not separated from one another by a long interval of journey, nor—because of sins—is there so great a multitude of people that they ought to have two bishops, as formerly they did. Therefore, because the bishop of the fortress of Cumae has completed the course

of this life, know that by the page of the present authority we have united both churches and committed them to you, and know also that you are the proper pontiff of both churches. And therefore, whatever things concerning either their patrimony or the ordination or promotion of the clergy you shall see fit to order and dispose according to the statutes of the canons, you shall have free license to do, as truly their proper bishop, by the consent and permission of our authority. Reside where you shall perceive it to be more convenient and useful, yet in such a way that you dispose with solicitous and provident care of the other church where you are not bodily present, so that the divine mysteries may be solemnly performed there with the Lord's aid.

C. XLIX. Apostolic authority has power to unite two episcopates into one.

The same to Bishop John, [of Velletri, book II, letter 35]. After hostile impiety—because of sins—so desolated the churches of different cities that, with the people lacking, no hope of repairing them remained, we are constrained by very great care lest, when their bishops have died, the remnants of the people, with no governance of a pastor ruling them, be snatched away through the trackless places of faith by the snares of the crafty enemy—which may it not be. Therefore, often admonished by solicitude for this matter, this counsel settled in our heart: that we should entrust them to neighboring pontiffs to be governed. And therefore we have foreseen that the care and government of the church of Tres Tabernae is to be committed to your fraternity, which it is necessary to aggregate and unite to your church, so that, with Christ's aid, you can properly be bishop of both churches and have free license by our present permission, as their proper pontiff, to dispose with vigilant and canonical care whatever things concerning its patrimony or the ordination or promotion of the clergy shall seem fit to you.

C. L. Let dioceses which never had a bishop not have one.

Likewise from the Second Council of Carthage, [c. 5]. Felix, Bishop of Selemsela, said: If this also pleases you, I intimate to your holiness that dioceses which never had bishops are not to have them, and that a diocese which once had one is to have its own. According to this exposition, it belongs to your holiness to judge what ought to be done. It was said by all: It pleases us.

C. LI. Unless with the will of the bishop, dioceses which are held by them are not to receive their own bishops.

Likewise from the Third African Council. It has been enacted in many councils by the assembly of priests that communities which are retained in dioceses by bishops and which have never had bishops are not to receive their own rulers except with the will of that bishop by whom they are held.

C. LII. Apostolic authority has power to exempt bishops from the jurisdiction of an archbishop.

Likewise Gregory to John, Bishop of Larissa, [book II, indiction 11, letter 7]. Our brother Adrian, bishop of the city of Thebes, coming to the city of Rome, lamentably complained that he had been unjustly condemned by your fraternity, as well as by John, prelate of the city of Prima Justiniana, on certain charges. § 1. But with the Lord's aid we shall treat elsewhere of his most wicked judgment and its condemnation. We found, however, that Bishop Adrian had suffered both from your hatred contrary to priestly conduct and from having been condemned without any right by the sentence of your fraternity in pecuniary cases. § 2. Therefore, because he could not be deprived of the grade of his

honor by being deposed contrary to law and the canons by the aforesaid John, bishop of Prima Justiniana, we decreed that he be restored in his church and recalled to the rank of his proper dignity. And although it would have been fitting that you be deprived of communion in the Lord's body because, after the removal effected by my predecessor of holy memory—by which he exempted Adrian and his church from the jurisdiction of your power—you presumed again to reserve some jurisdiction over them for yourself, nevertheless, deciding more humanely and preserving for you in the meantime the sacrament of communion, we decree that your fraternity abstain from every power of its former jurisdiction over him and his church; and, in accordance with the writings of our predecessor, if any case of faith, crime, or money can arise against our aforesaid fellow bishop Adrian, let it be examined through those who are or shall be our representatives in the royal city, if the question is of moderate importance, or let it be brought here to the apostolic see, if it is difficult, so that it may be determined by the sentence of our hearing.

But if at any time, by any occasion or surreption, you shall attempt to act against these things which we have established, we decree that you are deprived of sacred communion and that you are not to receive it, except at the final time of your life, unless permission of the Roman Pontiff has been granted. § 3. Moreover, let your fraternity restore to him without any delay the sacred or other movable and immovable property of his church which you are said to retain until now, a list of which, presented to us, we append to the present letters. If any question concerning these things arises between you, we will that it be ventilated before our representative in the royal city. GRATIAN. But if those places have not yet been assigned in the diocese of any bishop, let them receive their own bishop by the authority of the apostolic see. Hence Gregory the Younger writes to Boniface, [Bishop, final letter]:

C. LIII. Where the multitude of the faithful increases, bishops are to be ordained.

We command that, according to the statutes of the canons, where the multitude of the faithful has increased, you ought by the authority of the apostolic see to ordain bishops, yet with pious consideration, so that the dignity of the episcopate may not become cheap. GRATIAN. Just as two episcopates can be united into one in the manner written above, and one can be divided into two, so also a bishop can do this with baptismal and parochial churches, with the consent of his clerics. When this has been done, that part of the people which is subjected to the new churches is released from the right of the former church. If this could not be done, the multitude of churches would be reduced to fewness. But he cannot make several baptismal churches within one boundary. Hence it is read in the Council of Toledo:

C. LIV. Several baptismal churches cannot exist within one boundary.

Several baptismal churches cannot exist within one boundary, but only one with its chapels. And if there shall be a contention concerning the boundary of two mother churches, let the communities of both determine it; and if they do not agree, let the dispute be determined by the judgment of God. PART VI. GRATIAN. Therefore the right of churches is to be interpreted in such a way that, unless it shall have been assigned to other churches by the bishop's disposition, they suffer no diminution of their former revenues. Hence Pope Anastasius:

C. LV. Let one who wishes to retain tithes or offerings without the bishop's knowledge be deprived of communion.

We establish that if anyone shall contend for the offerings of a church or the tithes which the people ought to give, or shall wish to give them outside the baptismal church, without the knowledge of the bishop or of him to whom offices of this kind have been committed, and shall not wish to act with their counsel, let him pay our ban and be deprived of communion. GRATIAN. When he adds, "without the knowledge of the bishop," he leaves it to be understood that with the bishop's consent they can be given to other churches.

C. LVI. Let tithes be distributed according to the bishop's disposition.

Likewise. It is prescribed in the sacred canons that tithes are to be distributed according to the bishop's disposition. But certain laymen who have basilicas of their own, either as their property or as benefices, disregard the bishop's disposition and give their tithes not to the churches where they receive baptism, preaching, the imposition of hands, and the other sacraments of Christ, but bestow them according to their own pleasure either upon their own basilicas or upon other churches; this is known to be contrary in every way to divine law and the sacred canons. Hence we call upon your power to correct them. GRATIAN. But when they are reproved because they do this in disregard of the bishop's disposition, it is understood that, if they shall do this at the bishop's disposition, they will be found irreproachable.

C. LVII. Let one who wishes to dispense tithes or offerings without the bishop's knowledge be anathema.

Likewise Symmachus, Bishop of the Catholic Church of the city of Rome, said, [in the Sixth Roman Synod]. In the canons established with apostolic authority in the church of Gangra, it is written concerning offerings of fruits which are owed to the ministers of the church and concerning those things which are conferred for the uses of the poor: "If anyone shall wish to receive or give offerings of the church without the knowledge of the bishop or of him to whom offices of this kind have been committed, and shall not wish to act with his counsel, let him be anathema." And again in the same Council of Gangra: "If anyone shall give or receive things offered to God apart from the bishop or the consent of him who was appointed by the bishop to dispense mercy to the poor, let both the giver and the receiver be anathema." § 1. Therefore it is exceedingly iniquitous and an enormous sacrilege for anything that each person shall have conferred or indeed left to a venerable church, either for the remedy of sins or for the salvation or repose of souls, to be transferred or converted to another use by those by whom it is especially fitting that it be preserved—that is, by Christians and God-fearing persons, and above all by princes and the foremost persons of regions. And below:

§ 2. But in general, whoever shall presume by his perilous harassment to confiscate, claim, or seize the property of a church, [§ 3.] and likewise those who shall retain the property of a church by the command or largesse of princes or certain powerful persons, or by some invasion or tyrannical power, and shall leave it to their sons or heirs as though hereditary—as we have heard has already been done by certain persons—unless, when admonished by the pontiff and the truth acknowledged, they quickly restore the property of God, let them be struck with perpetual anathema. For we judge it iniquitous that we should be regarded as custodians of charters rather than defenders of property entrusted to us, as was commanded. And below: § 4. For wounds which do not feel soothing

applications must be cut away with iron. § 5. Likewise, those who are not corrected by priestly admonition ought also to be made exiles from the church, as the Lord says: "Remove the evil from among you." The entire synod, rising, acclaimed: We ask that it be done thus. This was said eight times. Hear us, O Christ; life to Pope Symmachus. This was said twelve times.

C. LVIII. One who seizes the property of a church and the goods of bishops shall be punished by the same penalty.

The same. Likewise, by the exhortation and judgment of you all, we decree that this also shall come to the knowledge of all churches and be firmly maintained by all: because the property of bishops is not doubted to belong to the church, if an assault shall have been made upon their resources with like cruelty, let the plunderers of the aforesaid property be struck by the aforesaid severity of the canons, so that those who are corrected neither by their own conduct nor by any chastisement of conscience may at least be pierced by the goads of ecclesiastical and canonical vengeance.

C. LIX. Ecclesiastical property cannot be distributed by the authority of princes.

Likewise from the book of Capitularies of the Emperors Charles and Louis, [c. 83]. Because, according to the tradition of the holy Fathers, we know that the property of the church is the vows of the faithful, the prices of sins, and the patrimonies of the poor, we endeavor not only to preserve for each what is possessed but also, with God's aid, to add to it. But so that we may remove entirely the suspicion long conceived by ecclesiastics concerning the division of ecclesiastical property, we establish that neither in our times, nor those of our sons, nor, by God's dispensation, those of our successors, shall it suffer any division or loss at all.

GRATIAN. Therefore, since anyone is forbidden to distribute the offerings of the church without the knowledge of the bishop or of him to whom offices of this kind have been committed, it plainly appears that with the bishop's consent they can be distributed to any churches. § 1. That authority of the Council of Toledo, [IV, c. 32], appears contrary to this interpretation.

C. LX. Let bishops presume to take nothing from the right of their diocese.

It was established by the present council that bishops are to govern their dioceses in such a way that they presume to take nothing from their right, but, according to the authority of earlier councils, receive a third part both of offerings and of tributes and fruits. But if anything more than this shall have been presumed by them, let it be restored through the council, with the founders themselves appealing, or certainly their relatives, if the founders have already departed from this world.

C. LXI. Let no one have license to alienate possessions left to a church.

Likewise Pope Symmachus, [to his brother Caesarius, c. 1]. We do not permit possessions which anyone gave or left to a church by his own judgment to be alienated under any titles and conveyances or under any pretext, unless perhaps to clerics of good merit, to monasteries in consideration of religion, or certainly to pilgrims, if necessity shall counsel that they be bestowed; yet in such a way that these persons enjoy the same possessions not perpetually but temporarily. GRATIAN. But that statement of the Council of Toledo is to be understood in such a way that bishops touch nothing

beyond the fourth or third part which is owed to them according to the diversity of places. Hence it was enacted in a council of Pope Leo IV, [c. 26]:

C. LXII. Let a bishop exact nothing from clerics and pious places beyond the statutes of the Fathers.

Let none of the bishops be permitted to exact contributions beyond the statutes of the Fathers from a subject priest or any other cleric and from pious places, or to impose additional compulsory services. But since he ought to be an excellent overseer, let him oversee in such a way that all the sheep committed to him are especially nourished by him and aided in their necessities, not oppressed by illicit exactions, because the Lord taught us to feed and teach and to minister to all, not to delight in earthly gains and avarice.

C. LXIII. A fourth part of the revenues of a church is to be distributed to the clerics.

Likewise Gregory to Leo, Bishop of Catania, [book VII, letter 8]. The gradation of places and the order of reason distinguished and established that there should be judgments for this purpose: so that superiors may not be able to occupy themselves fruitlessly in oppressing those subject to them, nor, in turn, may there be an unbridled license for subjects to rebel against their superiors. § 1. Therefore we will that, from whatever shall perhaps accrue to your church from revenue or any other title, you ought to set aside a fourth portion without any diminution and distribute it discreetly, as shall seem fit to you, among the priests, deacons, and clergy according to the fear of God.

C. LXIV. Bishops ought to exact nothing from their monks or clerics for the sake of shameful gain.

Likewise from the Seventh Synod, [c. 4]. The divine Apostle Paul, preacher of the church, as though laying down a canon for the priests of the Ephesians—indeed, for every consecrated multitude and fullness—testified thus confidently: "I coveted no one's silver or gold or garment. I showed you all things, because by laboring thus it is necessary to support the weak, judging it more blessed to give than to receive." For this reason we also, taught by him, determine that a bishop shall by no means, for the sake of shameful gain, devise excuses to excuse sins and demand gold or silver or another kind of property from the priests or clerics or monks who are under him. For the Apostle says: "Children ought not to lay up treasure for parents, but parents for children." And the Apostle Peter: "Feed the flock of God which is among you, not under compulsion but willingly according to God, not for the sake of shameful gain, nor as lording it over the clergy, but having been made an example to the flock. And when the prince of shepherds shall appear, you shall receive the unfading crown of glory." GRATIAN. But that which is placed at the end of the chapter of Symmachus, "Let these persons enjoy the same possessions not perpetually but temporarily," is to be referred only to personal possessions—namely, those of clerics and the poor—not to monastic possessions. PART VII. § 1. But how grave it is before God not to pay tithes, offerings, and first fruits to priests appears from the authority of Jerome and Augustine. For Jerome says on Malachi:

C. LXV. One who has not paid tithes to priests is held guilty before God.

"Return to me, and I shall return to you, says the Lord of hosts; and you have said, In what shall we return? Will a man defraud God? For you defraud me; and you have said, In what do we defraud you?

In tithes and first fruits. And you are accursed in want, and the whole nation defrauds me." Now let us follow the order of the prophet: "Because you have not rendered tithes and first fruits to me, therefore you are accursed with hunger and want, and you have supplanted or defrauded me." Behold, the year is completed, and you have carried nothing into my treasuries, but into your own barns; and in exchange for the tithes and first fruits, which were small things to be given by you, you have lost the abundance of your possessions and the entire plenty of your crops. But so that you may know that this was accomplished while I was angry because you defrauded me of my portion, I exhort and admonish you to bring tithes into the barns—that is, into the treasuries of the temple—and let the priests and Levites who minister to me have food; and test me, whether I shall not pour out such rains that the floodgates of heaven may be believed to have been opened, "and I shall pour out a blessing for you even unto abundance." The word "pouring out" indicates the designation of largesse. But it is possible that, when rains irrigate the fields, there may indeed be fertility, yet either the locust will come, or the caterpillar, or blight, or the cankerworm, and they will devastate the labors of men. Therefore he adds and says: "And I shall rebuke the devourers for your sake," namely the locust and the other things we have mentioned, "and they shall not corrupt the fruit of your land." § 1. Whenever famine, want, and a scarcity of all things oppress the world, let us know that this descends from the anger of God, who says that He is defrauded in the poor if they do not receive alms; and we can interpret His possessions as tithes and first fruits. § 2. If anyone learned and instructed in the law of the Lord can instruct others, he ought not to assign to his own prudence and talent what he possesses, but let him give thanks first to the Lord, who bestows all things, and then to His priests and ministers by whom he was taught. For if he shall not give thanks but shall claim knowledge for himself, he shall be accursed in want.

But if, understanding God to be the giver and giving thanks to those through whom he was instructed by God, he shall humble himself and bring food into God's barn—that is, shall minister the nourishment of Scripture to the peoples in the church—the floodgates of heaven shall immediately be opened over him, spiritual rain shall be poured out, and He shall command His clouds to rain a shower over him, and he shall enjoy an abundance of all things.

C. LXVI. Tithes are to be rendered to priests.

Likewise Augustine, [sermon CCXIX, *On Time*]. Tithes are the tribute of needy souls. But if you shall give a tithe, you will not only receive an abundance of fruits but also obtain health of body. Therefore the Lord God does not demand a reward but honor. For our God, who deigned to give the whole, deigned to receive a tithe from us, doubtless to profit not Himself but us. But if it is a sin to give late, how much worse a sin is it not to have given? Render tithes from military service, from business, and from craftsmanship. For since by giving tithes you can merit both earthly and heavenly rewards, why through avarice do you defraud yourself of a double blessing? For this is the Lord's most just custom: that if you shall not give Him a tithe, you shall be reduced to a tenth. You will give to an impious soldier what you are unwilling to give to a priest. God is always prepared to do good, but He is hindered by the wickedness of men. For tithes are demanded as a debt, and those who are unwilling to give them seize the property of others. And however many poor persons shall have died of hunger in the places where he dwells because he did not give tithes, he shall appear guilty of that many homicides before the tribunal of the eternal Judge, because he reserved for his own uses property assigned by the Lord to the poor. Therefore, let one who desires either to procure a reward for

himself or to merit forgiveness of sins render the tithe; and let him also endeavor to give alms to the poor from the nine parts.

C. LXVII. One who withholds necessities from those who preach the Gospel condemns himself.

Likewise Jerome, [in the commentary at the end of chapter 3 of the Epistle to Titus]. To be unwilling to contribute to apostolic men and evangelists of Christ for their necessary uses is to condemn oneself. But that tithes may lawfully be bestowed on monks with the consent of bishops, blessed Jerome writes to Pope Damasus, saying:

C. LXVIII. Clerics are free to grant tithes to monks.

Because whatever clerics have belongs to the poor, and their houses ought to be common to all, they ought to devote attention to receiving pilgrims and guests; they must take special care to expend from tithes and offerings upon monasteries and hospices whatever support they wish and are able to provide. For it is free to grant to monks and spiritual men who fear and worship God tithes and offerings and all means of relief, and to transfer them from their own right into the ownership and use of those men, and to regard in the poor not so much poverty as religion. § 1. But as to what your blessedness asked, whether the use of tithes and offerings can accrue to secular persons, your holiness knows that this is by no means permissible, as all the divine authorities of the paternal canons attest. Wherefore, if at any time things which are known to belong to divine right shall have been wrongfully detained by these persons, and shall have passed into the use of monks and servants of God, with the bishop of that place nevertheless giving consent, all things shall remain with them, supported by perpetual firmness and stability. § 2. But it is fitting that those clerics be sustained by stipends of the church whom no parents or relatives support. Those, however, who can be sustained by the goods and resources of their parents, if they receive what belongs to the poor, plainly incur and commit sacrilege, and through the misuse of such things eat and drink judgment upon themselves. GRATIAN. But concerning estates which are cultivated by their tenants, it was determined thus at the Council of Mainz: "Moreover, certain persons complained, etc."

Question II

GRATIAN. PART I. But concerning the chapels possessed by them, Pope John proves that they are to be governed by priests through their institution, writing to Isaac, Bishop of Syracuse.

C. I. Priests are to be instituted in the churches of monasteries by the abbots.

Having seen the letters of your charity, from which it is sufficiently perceived with how much zeal you show reverence to this holy see, we rejoiced not a little. Now, therefore, concerning those things on which you consulted us, we give kindly a considered counsel to our most beloved brother. For your pious gentleness referred to us the question whether churches handed over to monks for their quiet by holy councils and catholic bishops ought to be instituted through priests ordained and invested by them. Your fraternity also added that no small dispute and sedition had arisen between clerics and monks from this cause; no one doubts that this is done by the instigation of the crafty enemy. For he has a thousand ways of doing harm, and we are not ignorant of his cunning. For from

the beginning of his fall he strives to rend the unity of the church, to wound charity, to infect the sweetness of holy works with the gall of envy, and in every way to overturn and disturb the human race. For he greatly grieves and blushes that men formed from muddy matter maintain on earth the charity which he could not have in heaven. Hence it is fitting, insofar as it is granted to our frailty, that we fortify all approaches against his harmful craftiness, lest death enter through our gates. § 1. Therefore, after the counsel of many brothers has been diligently sought, we decree that henceforth churches handed over to monks are to be instituted through their own priests. For divine and secular laws provide that the institution belongs to him whose possession it is; and if charity was ready in giving that which is greater, let holy largesse be readier in conceding that which is lesser. For it was a greater thing to give possession than it is to grant investiture. How will the rights of the possessor be acknowledged, and the revenues of his own property be rendered to him, where what is his is given through another and, whenever the other wills, is taken away? It belongs to human custom to revere him by whose judgment and will one is now raised up, now cast down. Hence it happens that the priest becomes more inclined to serve the bishop's interest, and thus by a certain feigned authority the bishop draws back to himself what he had given piously and religiously. Thus, therefore, he is deprived of the reward which he had obtained: both because with feigned charity he takes away what he had given, and because, made excessively credulous by the words of depraved priests who love discord and schisms, he endeavors by a certain usurpation to take away altogether, after the fraud has been uncovered, what he had previously contrived under a false appearance to gain. Turning away their cunning and the persuasions of the crafty enemy, we henceforth grant them full license to be the investers of their own churches, yet in such a way that, if they shall presume to act contrary to the priesthood, they are punished by the judgment of a synod, and the offenses of the priests are cut away by the happy sword of the bishop. PART II. GRATIAN. By this authority the investiture of their churches is conceded to monks. But Pope Urban II appears contrary, saying:

[PALEA. C. II.

We admonish and command that the giving of tithes to God not be neglected at all, which God Himself established are to be given, because it is to be feared that, if anyone withholds from God what is owed to Him, God may perhaps through his sin take away his necessities from him.]

[PALEA.

C. III. Concerning the same matter.

Likewise Pope Nicholas II, sole letter, c. 5. We command that tithes and first fruits, or offerings of the living and the dead, be faithfully rendered by laymen to the churches of God, and that they be in the disposition of the bishops. Let those who shall retain them be separated from the communion of holy church.]

[PALEA.

C. IV. Concerning the same matter.

Likewise Pope Leo. Let no one receive tithes belonging to another.]

[PALEA.

C. V. Likewise Ambrose in sermon I *On Lent*.

For one who is unwilling to render to God the tithes which he has retained, and does not endeavor to render to a man what he unjustly took away from him, does not yet fear God and does not know what true penance and true confession are. Such a man cannot perform true almsgiving.]

C. VI. Let abbots not ordain priests in parochial churches without the bishop's counsel.

Indeed, because certain monks contend that they may take away from bishops their right, we establish that in the parochial churches which they hold they are not to place priests without the counsel of the bishops; but let the bishops, with the consent of the abbots, commit the care of the parish to a priest, so that priests of this kind render an account to the bishops concerning the care of the people, but show due subjection to the abbot concerning temporal property pertaining to the monastery, and thus the rights of each are preserved. The same: § 1. In parochial churches let priests be appointed by the bishops who shall answer to them concerning the care of souls and those things which pertain to the bishop.

C. VII. Let the churches of any monks whatsoever be subjected to the governance of bishops.

Likewise from the council held at Flavigny. It is to be established that the churches of any monks whatsoever situated in the individual parishes are, as is fitting, divinely subjected to the governance of the bishops and show them the services owed. GRATIAN. Behold, Pope Urban forbids the investitures of parochial churches to be made by monks, which Pope John conceded to them. But that statement of Pope John is to be understood concerning those chapels which, with all their right, are conceded to monks by bishops. This statement of Urban, however, is to be understood concerning those which abbots build on their own estates in their villages or fortresses.

Question V

[QUESTION V.]

GRATIAN. Such persons, even if they have the right of the territory, nevertheless do not have the power of governing the people and ministering spiritual things. This is also to be understood concerning a bishop. Hence Pope Nicholas says:

C. VIII. [I.] Let a bishop who builds a church in the diocese of another not dare to claim its consecration for himself.

If any of the bishops, for any convenience of his own people, arranges to build a church in the territory of another city, let him not presume to perform the dedication which belongs to him in whose territory the church arises. But let this favor be reserved to the bishop who is the builder: that those clerics whom he desires to be ordained on his property are to be ordained by him whose territory it is; or, if they have already been ordained, let him agree to have them; and all governance of that church will pertain to him in the territory of whose city the church shall have arisen.

C. IX. [II.] Newly founded basilicas pertain to the bishop whose judicial district they are known to be in.

Likewise from the Fourth Council of Toledo, [c. 34]. Possession of territory does not remove the judicial district, and therefore new basilicas which shall have been founded will without doubt pertain to that bishop whose judicial district they are known to be in.

C. X. [III.] A bishop who is the builder is not permitted to consecrate a church in the diocese of another.

Likewise Gregory, [book XI, letter 19, to John the Subdeacon]. John, the bearer of the present letters, our brother and fellow bishop, indicated to us that a certain Bishop Exsuperantius with rash daring constructed an oratory in his diocese and, contrary to custom, presumed to dedicate it without the authority of a precept, and did not fear to celebrate Masses there. It is fitting that you amend this matter with the greatest speed and severity and not permit any such thing to be attempted further. GRATIAN. This is to be understood concerning the right of ordaining, not of possessing. From these authorities it can easily be perceived that if either abbots or bishops shall build churches in their fortresses or villages, the judicial district is not thereby taken away from the bishop in whose diocese they shall be; and therefore priests, according to that statement of Urban and Nicholas, can be ordained in them only by the bishops, yet with the consent and election of the builders.

Question III

GRATIAN. PART I. But that all rights are taken away by prescription of time is proved by the authority of the Council of Chalcedon, of Pope Gelasius, and of the Council of Toledo. The first is this:

C. I. Rural parishes are to remain immovably with the bishops who possess them for thirty years without violence.

We have decreed that in the individual churches rural parishes are to remain immovably with the bishops who hold them, especially if they have governed them without violence for thirty years. But if a dispute concerning them shall have arisen within thirty years, let those who shall say that they were injured on that account be permitted to initiate a contest before the provincial synod.

C. II. Dioceses possessed by bishops for thirty years are to remain immovable.

Likewise Gelasius, [letter II to the Sicilians, c. 1]. The authority of our predecessors has issued forth that bishops are to have power to govern the resources of the church, yet in such a way that they ought to distribute stipends to widows, wards, and the poor, as well as to clerics. We establish that this, which has hitherto been decreed, is to be granted to them; let the bishops claim the remainder for themselves, so that, as we said before, they can be generous toward pilgrims and captives. § 1. It also pleased us to add that if—which may it not be—the resources of a church, as well as dioceses, are possessed by any bishops, let them lawfully claim for themselves what the thirty-year law has concluded, because the authority of our sons the princes has also issued forth thus.

C. III. Possession of territory does not remove the judicial district.

Likewise from the Fourth Council of Toledo, [c. 34]. Just as possession for thirty years takes away another's diocese, so it does not remove the judicial district of a territory.

C. IV. Possession for thirty years ought to be observed within one province.

Likewise from the same, [c. 33]. Whatever bishop shall have possessed the diocese of another bishop for thirty years without any challenge, although according to the rule of law the diocese does not appear to be his, nevertheless an action to reclaim it is not to be admitted against him. But this applies within one province, and by no means outside it, lest, while a diocese is defended, the boundaries of provinces be confused. PART II. GRATIAN. Behold, by these authorities it is proved that the rights of possession and governance are taken away by prescription. But the same Gelasius testifies to the contrary, writing to Bishops Maximus and Eusebius:

C. V. The status of parishes can be changed neither by presumption nor by prescription of time.

Although it is contained in the ancient rules that parishes assigned to each church by the original arrangement can be torn away for no reason, lest through a most wicked custom, as the rashness of a bad example increases, universal confusion arise, nevertheless by our decrees dispatched not long ago we also commanded that all things which had been invaded in this manner be restored. But because the rashness of usurpers thinks that a law can be generated for itself if it adds obstinacy of retention to its crime, we desire that those things which we decreed between our brother and fellow bishop Constantius, bishop of the Camiscana church, and those sent by the pontiff of Ancona be fulfilled through you; we then prescribed the form to be followed in other examinations. Therefore we do not permit the status of parishes, which has endured with the firmness of perpetual age, to be changed by any presumption, because neither the negligence of pontiffs, nor a plea of time which is perhaps generated through carelessness, nor consent furnished through sloth, nor a precept obtained by surreptitious petition can tear apart a diocese once established, from which the devout people always assemble for regeneration and confirmation. It is also known to have been established long ago that territory does not make a diocese. GRATIAN. This is distinguished in several ways. There are certain dioceses which are distinguished by fixed boundaries; these can in no way be prescribed against. But others, which are not distinguished by fixed boundaries and concerning which a definite determination did not issue long ago, are taken away by prescription. Hence Pope Innocent says:

C. VI. Possession of a boundary cannot be prescribed against.

An examination was conducted between our aforesaid brothers, Fulgentius, bishop of Astigi, and Honorius, bishop of Córdoba, concerning the parish of a certain basilica, which one of them asserted to belong to Cellas and the other to Regina. And because until now a boundary action has been ventilated between both parties, the retention of which, however ancient, would bring no prejudice of law, therefore, lest our sentence be called further into doubt between them, the synodal decrees were read aloud when the canons had been produced. Their authority admonishes that greed ought to be restrained in such a way that no one usurps another's boundaries. On this account it pleased us that men as inspectors are to be sent between the opposing parties, so that the perpetual dominion over the diocese of the possessor—if, however, the established boundary shall show by true signs that the

basilica belongs to the church which has the right of retention—shall belong to that church. But if the lawful boundary does not enclose that basilica, and the plea of prescription for so long a time is proved, the appeal of the present bishop will not prevail, because the plea of thirty years imposes silence upon him. This is also commanded by the edicts of secular princes and decreed by the authority of the Roman pontiffs. But if, within the limits of thirty years, an unjust retention of the basilica outside the boundaries of another is found, it shall be restored without delay to the right of the bishop who reclaims it.

C. VII. Territories which have been defined cannot be prescribed against by time.

Likewise Gelasius to Bishop Justus. Let your belovedness take care, when the truth of all matters has been faithfully sought, that if a definite determination concerning the territories from which the aforesaid contention arose was issued long ago, it is to be preserved inviolate; otherwise, if nothing was ever established as having been delimited, then concerning the prescription of periods of time, if either party has confidence in it, let that party furnish an oath, yet in such a way that the party which is proved to have possessed until now is permitted to offer the oath. PART III. GRATIAN. It can also be distinguished in another way. Those things which anyone usurps by his own authority cannot be prescribed for, because he begins to possess them under no title; and in this case that authority of Gelasius is to be understood: "A plea of time which is perhaps generated through carelessness cannot tear apart a diocese once established." It is to be understood if he began to possess it under no title but by usurpation alone. But if he began to possess it by the authority of a judge and the long custom of privileges, then the plea of time imposes silence on the claimant. Hence Pope Gelasius says:

C. VIII. Privileges possessed for thirty years ought to be preserved immovable.

It pleased this holy and great synod that property or privileges which pertain to the churches of God by long custom, and which were given in writing either by emperors of divine memory or by other worshipers of God and have been possessed by them for thirty years, are by no means to be withdrawn from the power of their prelates by any secular person through force or taken away by any devices; but let everything which is known to have been possessed by churches within the span of thirty years remain under the power and command of the prelate of the church. Therefore, whoever among secular persons shall act against the present determination is to be judged as sacrilegious; and until he shall correct himself and restore to the church its own privileges or property, let him be anathema. The same to the Bishops of Dardania.

C. IX. Things which are possessed peacefully for thirty years cannot be reclaimed.

Among other things he says: I hear that certain persons wish after five hundred years to overthrow the ordinances of Christ, although a thirty-year law of men cannot be broken. PART IV. GRATIAN. Likewise, if a controversy concerning ecclesiastical property has been initiated and a determination has followed, even if it is unjust, nevertheless, because he began to possess not by his own authority but by that of the person determining, the prescription of thirty years imposes silence upon the claimant, yet in such a way that the reckoning of prescription takes its beginning not from the time of

the determination but from the death of the person determining. Hence it was enacted at the Council of Toledo, [IX, c. 8]:

C. X. The lifetime of one who disposes invalidly cannot pertain to the thirty-year period.

If priests or ministers, while they appear to administer the governance of churches, are known to have determined anything concerning ecclesiastical property contrary to the most holy enactments of the Fathers, the order of reckoning will be established not from the day on which they decreed such things in writing but from the time when by dying they left such things determined. For the lifetime of one judging invalidly can nowhere pertain to the thirty-year period, because the status of the transactions did not take its beginning from the origin of equity. PART V. GRATIAN. Likewise, those things which are possessed as benefices, or which were possessed for a longer time because fear of hostilities intervened, cannot be prescribed for. Hence it was determined at the Council of Agde, [c. 59]:

C. XI. Things which are possessed as benefices cannot be prescribed for.

Whatever clerics shall have possessed anything from the bounty of the church for however great a length of time, let those things not be called into their own right by prescription of time, provided it is evident that the property belonged to the church, lest bishops of a lengthy administration also appear either not to have been required to make precarial instruments when they were ordained or to be able to transfer resources retained for a long time into the right of their own property.

C. XII. Things granted to certain persons in consideration of humanity cannot be prescribed for.

Likewise from the Council of Orléans, [I, c. 25]. If a bishop in consideration of humanity shall have granted little slaves, little vineyards, or little lands to clerics or monks, or to any persons, to be cultivated or held for a time, even if long spans of years are proved to have passed, let the church suffer no prejudice, nor let a prescription of secular law which might impede the church be pleaded against it.

C. XIII. Prescription of time is not pleaded where fear of hostilities has intervened.

Likewise from the Council of Seville, [II], at which Isidore was present, [c. 1]. PART VI. At the first proceeding, a petition of Theodulf, prelate of the church of Málaga, was presented to us, asserting that the ancient parish of the same city was once severed by the danger of military hostility, and that some part of it was retained by the churches of the cities of Astigi, Elvira, and Cabra. Concerning this matter it pleased us that every parish which anyone proved his church to have retained by ancient dominion before the military hostility should be restored to its privilege. For just as by worldly law ancient possession is restored by the right of postliminy to those whom barbarian severity carried away under the necessity of captivity when they return, so no differently will the church also receive back the parish which it held before, together with its property, whether it is possessed by other churches or has passed into the possession of anyone whatever. For prescription of time is not to be pleaded where necessity of hostilities has intervened.

C. XIV. Prescription of time does not run where the fury of hostilities presses.

Likewise Pope John [VIII] to Bishop Paul, serving as legate in Germany and Pannonia. Moreover, if perhaps a claim is made concerning the number of years, let him know that a fixed number has been appointed among Christians and those who are of one faith. But where the fury of pagans and unbelievers is in question, however much time may pass, it does not prejudice the right of churches, which, knowing nothing of bodily arms, patiently await only the Lord and their defender, whenever it shall please Him to show mercy. But if length of years impedes in such matters, God Himself is to be reproved, who after four hundred and thirty years freed the children of Israel from the harshest servitude of Pharaoh and the iron furnace; and the Redeemer Himself also, by Himself, after thousands of years rescued the human race from the enclosures of hell. PART VII. GRATIAN. Those dioceses which, while their own bishops were negligent, others recalled from heresy to the integrity of faith are also taken away by prescription. Hence it is read in the Ninth African Council, [c. 88]:

C. XV. If any bishops neglect to gain their dioceses for God, after three years they shall belong to those bishops by whose zeal they were reconciled to the faith.

It pleased us that whoever neglects to gain for catholic unity the places pertaining to his see is to be approached by diligent neighboring bishops, so that he may not delay in doing this. But if within six months from the day of the approach he shall not have accomplished it, let those places pertain to him who shall have been able to gain them; yet in such a way that, if he to whom they appeared to pertain shall be able to prove that his negligence was chosen by the heretics so that they might remain there with impunity, and that his diligence was forestalled so that his more solicitous care might thereby be avoided, when the bishop-judges shall have learned this, let them restore the places to his see. GRATIAN. That prescription of long time by which Gelasius denies that the status of parishes can be changed can also be understood in another way. For long time, as is held from the laws, is understood as ten or twenty years. Therefore, by the authority of Gelasius and secular laws, this prescription of long time cannot be pleaded against churches. PART VIII. § 1. Some prescriptions were introduced out of disfavor toward the claimant and favor toward the possessor; others solely out of disfavor toward the claimant. For one who in good faith and under a just title shall have held the property of a person present for ten years, but that of an absent person for twenty years, will be protected by a perpetual defense, not only against others but also against creditors to whom that property had been pledged, and even against the true owner. But if by some event he shall have fallen from possession, he will be able effectively to vindicate the property even against the true owner. But if under no title, yet in good faith, he shall have possessed another's property for thirty years, he will enjoy a similar protection. Good faith, however, is referred not to the course of the intermediate time but to the beginning of possession. For it is sufficient that at the beginning anyone commenced possession in good faith, even if in the intermediate time he shall have had knowledge that the property belonged to another. § 2. These prescriptions were introduced in favor of the possessor and out of disfavor toward the claimant, because the law favors those who possess in good faith and under a just title, or in good faith alone, but disfavors and punishes those who are negligent and idle concerning their own property. § 3. But if anyone shall have begun to possess another's property in bad faith, after thirty years he will be protected by a defense against every claimant. But if by some event he shall have fallen from possession, he will have no action, because this prescription was

introduced not in favor of a possessor in bad faith but solely out of disfavor toward one who neglects to pursue his own property. But if the property shall come to its creditor or owner, he will have the advantage of detention; if, however, it shall come to another person, the creditor or owner will be able to proceed against him, nor will the defense of the intermediate possessor profit him, because he did not have his basis of possession from that possessor. But if possession shall have come to them violently, the possessor in bad faith will receive the advantage of possession without distinction. § 4. These things are to be understood concerning prescriptions of ten, twenty, or thirty years, if the things are proved to have been possessed without interruption. But if possession shall have been interrupted by actual detention, a new thirty years for prescription will in all cases be counted from the day possession was recovered.

If it was interrupted through joinder of issue, forty years will be counted from the final day of the litigation. But if anyone obtains possession from one who was in a position to prescribe, he will be able to join the preceding time with the time of his own possession. § 5. But if the person whose property is being prescribed for shall be unable to join issue, either because of the absence, infancy, or madness of his adversary when that adversary has no guardian or curator, or because the adversary is established in great power, let him approach the provincial governor within the established periods, present a petition to him, bring this into complaint, and thus effect an interruption of time. But if he shall be unable to approach the governor, let him at least go to the bishop of the places or the defender of the city and hasten to manifest his will in writing. But if the governor, bishop, or defender shall be absent, let him be permitted to post it publicly where the possessor has his domicile, either with the subscriptions of public notaries or, if the city does not have public notaries, with the subscriptions of three witnesses; and let this suffice for every interruption of time, whether the prescription is of three years, of long time, or of thirty or forty years. § 6. These things concern prescriptions between private persons. But against religious places only a prescription of forty years runs. Hence in the *Authentics*: "Actions which a prescription of thirty years bars are barred in forty years if they belong to a religious place." And in the *Novels*: "Neither of ten years nor of twenty years, etc." But in the canons a church is permitted to prescribe against a church in thirty years, and a monastery against a church only in forty years. But if a private person shall have possessed first fruits and tithes either under a title or without a title, he will be able to be protected by no prescription of time. For things which cannot obtain effect in law from the beginning do not acquire validity through the course of time. § 7. Hence, if a free man is held as a slave for a long time, even if the courses of forty years shall have been exceeded, the rights of liberty will by no means be mutilated by length of time alone. § 8. Furthermore, as the church stands in relation to the commonwealth, first fruits and tithes have the character of civil public obligations. § 9. Moreover, public obligations cannot be prescribed against. Hence in book VII of the Code, title *On the Prescription of Thirty or Forty Years*, Emperor Anastasius:

[C. XVI.]

"We command that those who have possessed any property through the continuous course of forty years without any lawful challenge are by no means to be removed from possession or ownership of the property; but that they are to be compelled to pay the public obligations, either the civil canon or any other public assessment imposed upon them, and that a prescription of any period pleaded against this part is not to be admitted." [GRATIAN.] Although estates, whether of a private person

or of a church, can be prescribed for, the revenue of first fruits and tithes cannot be taken away by prescription, even if any layman shall have obtained a rescript concerning them from the Roman Pontiff. § 1. For rescripts obtained contrary to written law, unless they are of such a kind that they profit some and harm no one, are judged to be of no force. § 2. Likewise: Tithes were set apart for priests and Levites by God's command, so that those who are numbered in the Lord's lot might live from the Lord's lot. Therefore they cannot be conceded to laymen by anyone's privilege, lest human authority bring prejudice upon divine commands. § 3. Hence Emperors Valentinian and Theodosius: "We command that all lands which were sold or alienated by any other compact in any province by tenants or emphyteutic lessees from imperial domains, the right of the commonwealth, or temples be restored by those who hold them wrongly and contrary to the laws, with no prescription of long time standing in the way, in such a manner that it is not even permitted to reclaim the price from the unjust purchasers." PART IX. § 4. But concerning prescriptions of long time, it is found in the *Authentics*, collection VIII, constitution six: "Actions which otherwise a prescription of thirty, ten, or twenty years bars are barred in forty years if they belong to a religious place, while those which have their place by usucaption have prescription of four years." PART X. [GRATIAN.] But only by prescription of thirty years and thereafter, from which prescription, however, the privileges of the Roman Church are excluded, which can be prescribed for only by a period of one hundred years. Hence John VIII writes to King Louis:

C. XVII. The privileges of the Roman Church are taken away only by prescription of one hundred years.

Let no one take support for resistance from the number of years, because the privileges which the holy Roman Church—which by God's authorship we serve—received upon the firm rock of Peter's stability are narrowed by no periods of time and prejudiced by no divisions of kingdoms. But the venerable Roman laws, promulgated divinely through the mouths of princes, admit prescription of its property only after one hundred years.

Question IV

GRATIAN. It has been shown when a church can prescribe against a church. Now it is to be seen whether a monastery has power to prescribe against a church. Urban II forbade this, saying:

C. I. Monks cannot prescribe for anything by a period of thirty years.

We forbid in every way that abbots or monks have possessions of churches and bishops by thirty-year prescription. GRATIAN. But if thirty-year possession is taken away from them, prescription of forty years is conceded to them by blessed Gregory. For he says to Peter the Subdeacon, [book I, c. 9]:

C. II. Prescription of forty years is conceded to religious houses.

We will that, when you arrive at the city of Palermo, you examine the question itself by this reasoning—with ownership of the property meanwhile remaining with the possessor, just as it has been possessed until now—so that, if you shall find that the aforesaid monastery of Saint Theodore possessed without disturbance for forty years the boundaries concerning which the claim was initiated, you are thereafter to permit it to sustain no calumny, even if something could have belonged to the holy Roman Church, but procure their undisturbed peace in every way. But if the

agents of the church shall show that they did not possess them for forty years with undisturbed right, but that some question concerning those boundaries was at some time initiated within that period, let it be quietly and lawfully settled by chosen arbiters.

C. III. Concerning the same matter.

Likewise from the *Novels* of Justinian, [Novel CXXXI]. Let neither prescription of ten, twenty, or thirty years, but only courses of forty years, be pleaded against religious houses, not only in other property but also in legacies and inheritances. GRATIAN. Therefore, just as by law only a forty-year prescription is to be pleaded against religious houses, so also by Gregory's authority they can prescribe against other churches by the same span of time.

Question V [VI]

QUESTION V. [VI.]

GRATIAN. PART I. But blessed Gregory testifies that the rulers of a church cannot by their own authority, with judicial proceedings omitted, reclaim the things which are owed to the church, [book IV, c. 38], saying:

C. I. Let the property of a church be defended by judgment, not by hands.

A new and very reprehensible custom has erupted in this church: when the administrators of its patrimony suspect that urban or rural estates can belong to its right, they impress titles after the manner of the fisc and defend by hands, not by judgment, that which they judge can belong to the poor; and although the truth commands its preachers to do "nothing through contention," even the evil of litigious contention itself is surpassed, and any property, when it is judged that it can belong to the church, is held by force. Therefore it was established by the present decree that if any ecclesiastical person shall ever presume of his own accord to place titles upon either a rural or an urban estate, let him be anathema. And all responded: "Let him be anathema." § 1. But if he who presides over the church shall either command this to be done himself or neglect to punish with worthy chastisement what was done without his command, let him be anathema. And all responded: "Let him be anathema."

Question VI

GRATIAN. PART II. GRATIAN. But that whoever usurps by his own authority the things which he thinks are owed to him, and does not claim the property through a judge, loses his case is held from the authority of the Council of Milevis, in which it is read to have been established thus, [c. 21]:

C. I. [II.] Let a bishop who seeks to take possession by his own authority of his churches retained by another suffer detriment to his case.

It pleased us that whatever bishops shall reclaim churches or communities which they judge to pertain to their see, not in such a way that they conduct their cases with bishops judging, but shall rush in while another retains them, whether the communities are unwilling or willing, are to suffer detriment to their case. And whoever have already done this, if the contention between the bishops has not yet been ended but they still contend concerning it, let the one who is established to have

rushed in with ecclesiastical judges omitted depart from it. § 1. Nor let anyone flatter himself if he shall have obtained letters from the primate permitting him to retain it; but whether he has letters or does not have them, let him meet with the one who holds it and receive his letters, so that it may appear that he held peacefully the church pertaining to him. But if the other shall raise any question, let the case be ended through bishop-judges, either those whom the primate shall have given them or those neighboring bishops whom they themselves shall have chosen with the counsel of the primate. PART III. GRATIAN. To the contrary Gregory writes to John the Defender, going to Spain, [book XI, letter 50], saying:

C. II. [III.] The offense of a person cannot be turned to the loss of a church.

If it shall be established that the bishop—which may it not be—committed such a fault that it is evident he was not unreasonably deposed, let his deposition be confirmed, and let all the property of his church which had been taken away be restored, because the offense of a person is not to be turned to the loss of a church. But if it is said that Comitiolus is dead, let those things which were unjustly taken away by him be rendered by his heir without excuse.

C. III. [IV.] Let vengeance proceed against the person of the offender, not against his resources.

The same to Peter the Subdeacon, [book I, letter 42]. We have learned that if anyone from the household commits a fault, vengeance is taken not upon him but upon his substance. Concerning this matter we command that whoever shall commit a fault is indeed to be punished in his own person, as is worthy, but that his property is to be spared entirely.

C. IV. [V.] Let the property of those who fall from the clergy be handed over to a monastery together with them.

The same, [in the same letter]. Concerning fallen priests or anyone from the clergy, we will you to observe that you do not involve yourself with any contamination in their property; but seek out the poorest regular monasteries which know how to live according to God, hand the fallen over to penance in those monasteries, and let the property of the fallen profit the place in which they are handed over to do penance, so that those who bear solicitude for their correction may have support from their property. But if they have relatives, let their property be given to the lawful relatives, yet in such a way that the maintenance of those who shall have been given over to penance ought to be sufficiently provided. § 1. But if any priests or Levites, monks or clerics, or any others from the ecclesiastical household shall have fallen, we will that they be given over to penance, but that their property not be withdrawn from ecclesiastical right. Nevertheless, let them receive for their own use that from which they may subsist for penance, lest, if they are stripped bare, they be burdensome to the places in which they shall have been placed.

C. V. [VI.] A useless priest does not deprive his church of its dignity.

Likewise Leo IV to King Charles. If perhaps—which we do not believe—we are judged useless among you, nevertheless the church over which, by the Lord's permission, we preside is not useless, but is deservedly called by all together the head and beginning of all.

C. VI. [VII.] A bishop is not permitted to take away the possessions of a monastery because of the abbot's sin.

Likewise in the Council of Mainz. A bishop is not permitted to take away the possession of a monastery, although the abbot has sinned; but let him subject the abbot to the power of the abbot of another monastery. [PALEA.

C. VII. [VIII.] Let subsequent pontiffs by no means presume to take away the things which priests have given.

Likewise Gelasius. We have judged that this is to be established: whatever benefactions preceding priests shall have given to clerics or those serving them, from the property of the church for use or from their own property for ownership, let subsequent pontiffs by no means presume to take them away. But if there shall have been any fault, let severity be exercised against the person according to the quality of the persons or the rule of the preceding canons, not against the property.] GRATIAN. Therefore, if the offense of a person cannot be turned to the loss of a church, since an administrator can make the condition of the church better, not worse; if the possessions of a monastery are not permitted to be taken away because of an abbot's sin: how will the offense of a bishop be turned to the loss of a church, so that it should suffer detriment to its case on that account? But to suffer detriment to the case is not to be understood in such a way that the church is deprived of its right; rather, when the clerics stand before the judge, the bishop will be silent and will be fined for the injury inflicted, if he shall have property of his own.

Question VII

GRATIAN. PART I. But the authority of all the canons testifies that neither an abbot nor anyone else is permitted to receive churches from the hand of laymen. For in general both churches and the property of churches remain under the power of bishops. But laymen can possess neither tithes nor churches by their own authority or that of bishops. Hence, if bishops shall have given churches or tithes to laymen either as a benefice or for a price, they make the house of prayer a house of business and a den of thieves. Hence, after the overthrow of their see, separated from the assembly of the faithful, they shall be scourged by the Lord with an eternal lash. Hence Gregory VII says, [in the Lateran Council, c. 7, book VI of the *Register*]:

C. I. Let tithes not be possessed by laymen.

By apostolic authority we forbid tithes, which canonical authority demonstrates were conceded for the use of piety, to be possessed by laymen. For whether they received them from bishops, kings, or any persons, unless they shall restore them to the church, let them know that they commit the crime of sacrilege and incur the danger of eternal damnation. § 1. But it is more fitting that we receive from all the people the tithes and first fruits which we decree by right belong to priests, which the faithful offer at the Lord's command, according to that prophecy of Malachi the prophet: "Bring the whole tithe into my barn, so that there may be food in my house." § 2. But we decree that these tithes are to be under the bishop's hand, so that he who presides over the others may distribute them justly to all and not furnish anything more honorably to one person, from which others might be moved with a scrupulous heart; but let all things be common, because it appears dishonorable that some priests

should have while others suffer loss; but just as there is one catholic faith, so it is necessary that he who is provider of the place, although the churches are many, nevertheless distribute faithfully to all.

[PALEA.

C. II. Concerning the same matter.

Hence Urban II: When a synodal assembly of many bishops was gathered at the city of Clermont, a question was proposed to us by certain of them concerning churches or ecclesiastical possessions acquired until the present by clerics or monks without consulting the bishops. But we, employing the sounder counsel of those same bishops, yielding for the time and providing for ecclesiastical peace, and because otherwise a question of this kind could not proceed without danger of inevitable scandal, decreed by apostolic authority that those things which were acquired up to today by clerics or monks, or by any persons, as they were able, are to remain perpetually ratified and undisturbed, yet with this tenor: that henceforth they are not to presume such things without consulting the bishops.]

[C. III.]

Likewise Gregory [VII]. A sinister report has reached us that certain bishops confer the tithes and offerings of Christians not upon the priests of their own diocese but rather upon lay persons—namely, soldiers or servants or, what is graver, blood relatives. Hence, if from now on any bishop shall be found a transgressor of this divine precept, let him be held not the least among the greatest heretics and antichrists; and, just as the Synod of Nicaea decreed concerning simoniacs, let both the bishop who gives and the laymen who receive from him, whether for a price or as a benefice, be assigned to the fires of eternal burning.

C. IV. One who pays tithes from all his possessions gives tithes faithfully.

Likewise Ambrose in the sermon *On Lent*, [whose beginning is: "Behold, now is the time"]. Whoever shall recognize in himself that he did not faithfully give his tithes, let him now amend what he did insufficiently. What is it to give faithfully, except that he at no time offer either what is worse or less, from grain, wine, the fruits of trees, livestock, a garden, business, or his own hunting?

C. V. Let those who are unwilling to give tithes to priests be excommunicated.

Likewise from the Council of Rouen. All tithes of the land, whether from crops or the fruits of trees, belong to the Lord and are sanctified to Him. [PALEA. Oxen, sheep, and goats which pass under the shepherd's rod: whatever comes tenth shall be sanctified to the Lord. Neither good nor bad shall be chosen, nor shall it be exchanged for another. If anyone shall exchange it, both that which was exchanged and that for which it was exchanged shall be sanctified to the Lord, and it shall not be redeemed.]

But because many are now found unwilling to give tithes, we establish that, according to the precept of our Lord, they are to be admonished once, a second time, and a third. If they shall not amend themselves, let them be struck with the bond of anathema until suitable satisfaction and amendment.

C. VI. Tithes are paid according to the example of the ancients.

Likewise from the Council of Mainz. Abraham intimates by deeds and Jacob by promises that tithes are to be given to God and the priests of God, and all the holy priests commemorate this. GRATIAN. But they are not to be bought back from the people if the people shall have been unwilling to give them otherwise. Hence it is read in the same council:

C. VII. Tithes are not to be bought back from the people.

It is to be forbidden by the bishops that tithes which the people are unwilling to give unless they are bought back from them by some payment be treated in this way.

C. VIII. Because tithes are not rendered, the assessment of the fisc has increased.

Likewise Augustine, [book L of the homilies, homily 48]. Our forefathers abounded in all resources for this reason: that they gave tithes to God and rendered the census to Caesar. But now, because devotion to God has departed, the assessment of the fisc has increased. We are unwilling to divide tithes with God, but now the whole is taken away. The fisc takes what Christ does not receive.

C. IX. One who commits a church to undisciplined persons sells doves.

Likewise Origen, [homily 15 on chapter 21 of Matthew]. And we have said these things according to the simple understanding. But according to the moral understanding we shall say such things, and first indeed concerning the temple, about which the Lord said through the Prophet: "My house shall be called a house of prayer." Therefore, in accordance with the bodily circumcision of the flesh and the bodily feasts and sacrifices of the law, the temple of God, which was constructed from insensible stones, will consequently also be understood: first constructed by Solomon, then repaired by Ezra, but afterward, after Christ's advent, destroyed by the Romans; and that house is the house of prayer. When it has been destroyed, it is necessary that the Jews, as now no longer having a house of prayer, no longer have the privilege of God's watchman and cannot serve God according to the law. § 1. When this was done, therefore, Christ cast out all things in the ministry of His spiritual acts; and what He then did, He enacted visibly, casting those who sold and bought out of the temple, overturning the tables of the money-changers and the seats of those who sold doves, for the correction of the people: that they are not to celebrate feasts in God's name for worldly purposes, nor devote themselves to purchases and sales in an unsuitable place in which they ought not to buy and sell, but to devote themselves only to prayers and to assemble as though in a house of prayer. § 2. But now I judge the church of Christ to be the temple of God constructed from living stones. There are many in it, however, who do not live spiritually, as is fitting, but serve according to the flesh, and by their acts, which are not worthy of the church of God but of a den of thieves, they make the house of prayer constructed from living stones into a den of thieves. For one who considers in many churches the sins of such Christians, who judge piety to be gain, and who, although they ought to live from the Gospel in the manner fitting for servants of God, do not do this but acquire riches and many possessions—will you not say that under them the church has been made a den of thieves, so that Christ rightly says to them because of the dissipation of His church: "What profit is there in my blood while I descend into corruption?" Likewise He Himself through Hosea in this manner: "Woe is me, because I have become like one who gathers straw at harvest and like a cluster at the vintage,

when there are no bunches to eat the first fruits. Woe to my soul, because the God-fearing man has perished from the earth, and there is no one among all men who corrects." And when you shall have understood Jesus saying such things and mourning our sins, behold at the same time also that which is written in the Gospel: "When He saw Jerusalem, He wept over it and said: If only you also had known." And if He reasonably wept over Jerusalem, He wept more reasonably over the church, built indeed to be a house of prayer but made through shameful gains into a den of thieves. § 3. And I judge that the word concerning the sellers of doves befits those who hand churches over to avaricious, tyrannical, undisciplined, and irreligious bishops or priests. For this reason also the Evangelist stated that only the seats were overturned by Jesus. And would that those who glory in the seats of Moses upon which they sit, and sell all the seats of doves and hand them over to such superiors, would hear these things together with the admonition of Scripture as it speaks; to them it is rightly said by the Lord through Jeremiah the prophet: "The rulers of my people have not known me. For they are foolish and without understanding; they are wise to do evil, but they do not know how to do good." GRATIAN. Therefore, since churches and their offerings remain only under the power of bishops, it is certainly evident that they are to be received from no one other than from their hand. Hence it was established in the Council of Orléans, [I, c. 19]:

C. X. All basilicas pertain to the bishop in whose territory they are situated.

Let all basilicas which have been constructed in various places or are constructed daily remain under the power of the bishop in whose territory they are situated.

C. XI. Let neither an archdeacon, archpriest, provost, nor dean grant ecclesiastical offices or benefices without the bishop's consent.

Likewise Pope Callixtus. Let absolutely no archdeacon, archpriest, provost, or dean grant to anyone the care of souls or prebends of a church without the judgment or consent of the bishop; rather, just as was established by the holy canons, let the care of souls and the dispensation of ecclesiastical monies remain under the bishop's judgment and power. But if anyone shall presume to act contrary to this or to claim for himself the power which pertains to the bishop, let him be barred from the thresholds of the church. Likewise Gregory VII, presiding in a general synod, said, [cc. 1 and 2]:

C. XII. An episcopate or abbey ought not to be received from the hand of a layman.

If anyone shall henceforth receive an episcopate or abbey from the hand of any lay person, let him by no means be held among the bishops or abbots, nor let any hearing be conceded to him as bishop or abbot. Moreover, we forbid him the grace of blessed Peter and entry into the church until, coming to his senses, he abandons the place which he took under the crime both of disobedience and of ambition, from which the crime of idolatry arose. We establish the same also concerning inferior ecclesiastical dignities. Likewise, [c. 2]: § 1. If any of the emperors, kings, dukes, margraves, counts, or any secular powers or persons shall presume to give investiture of episcopates or of any ecclesiastical dignity, let him know that he is bound by the bond of the same sentence.

C. XIII. Let one who receives a church from the hand of a layman be subject to excommunication and experience no fruit of the investiture.

The same, [in the same place, c. 3]. Because we have learned that investitures are made by laymen in many regions contrary to the authority of the holy Fathers, and that from this arise very many disturbances in the church—indeed, the ruin of holy religion—by which the religious order of Christian discipline is disturbed, we decree that no cleric receive investiture of an episcopate, abbey, or church from the hand of an emperor, king, or any lay person, male or female. But if he shall presume to do so, let him recognize that investiture to be void by apostolic authority and himself to be subject to excommunication until worthy satisfaction.

C. XIV. Concerning the same matter.

Likewise from the Canons of the Apostles, [31]. If any bishop, using secular powers, obtains a church through them, let him be deposed and separated, and all who communicate with him.

C. XV. Concerning the same matter.

Likewise from the *Chronicle* of Anastasius. Indeed, the bishops of Thessalonica, because of fear of Emperor Anastasius, consented to Timothy, Bishop of Constantinople, who had anathematized the Council of Chalcedon. But forty bishops of Illyria and Greece, assembling as one, by a declaration made in writing departed from him as from their own metropolitan, and, sending to Rome, professed in writing that they communicated with the Roman bishop. And shortly afterward: § 1. When Dioscorus the Younger had received the imposition of hands, multitudes of peoples withdrew, saying that, according to what is contained in the canons of the holy Apostles, he was not made a bishop and therefore would not be received. For the princes enthrone him.

C. XVI. Let one who obtains churches through laymen be excommunicated.

Likewise Pope Paschal [II]. If any cleric, abbot, or monk shall obtain churches through laymen, according to the canons of the holy Apostles and a chapter of the Council of Antioch, let him be subject to excommunication.

C. XVII. Let one who obtains churches through laymen, and one who lays a hand upon him, be deprived of communion.

The same. Following the constitutions of the holy canons, we establish that whatever cleric from this hour shall receive investiture of a church or ecclesiastical dignity from the hand of a layman, and the one who shall lay a hand upon him, shall be subject to danger of his rank and be deprived of communion.

C. XVIII. Concerning the same matter. The same.

Let no layman occupy or dispose of churches or the goods of churches. But let one who shall act otherwise be barred from the thresholds of the church according to the chapter of blessed Alexander.

C. XIX. Concerning the same matter. The same.

Just as the Lord's garment was not torn, but lots were cast for it, so the church also ought not to be torn, because it consists wholly in unity. Therefore let churches be restored to the power of their own

bishop and be ordered by him, as is provided in the sacred canons. Otherwise, let both the churches themselves and their clerics be deprived of divine offices.

C. XX. Let no cleric obtain a church through laymen.

Likewise Alexander [II]. Let no cleric or priest in any way obtain a church through laymen, either gratis or for a price. § 1. Let no one assume the habit of a monk while having the hope or promise that he will become abbot. § 2. Let no priest have two churches.

C. XXI. Let individual bishops have their own stewards.

Likewise from the Council of Chalcedon, [c. 26]. Because in certain churches, as we have learned by report, bishops manage the resources of the church without stewards, it pleased us that every church having a bishop is to have a steward from its own clergy who shall dispense ecclesiastical property according to the judgment of his own bishop, so that the administration of the church may not be without testimony, ecclesiastical resources may not thereby be dispersed, and disparagement and a curse may not be procured for the priesthood. But if he shall by no means do this, he will be subject to the divine constitutions.

C. XXII. Laymen are not to be appointed stewards.

Likewise from the Second Council of Seville, at which Isidore was present, [c. 9]. At the ninth proceeding we learned that certain persons from our college, contrary to ecclesiastical customs, have laymen appointed as stewards over divine property. Therefore, treating the matter together, we have chosen that each of us, according to the edicts of the Fathers of Chalcedon, appoint for himself a steward from his own clergy. For it is indecorous for a layman to be the bishop's vicar and to judge ecclesiastical men. For in one and the same office the profession ought not to be unlike. This is also forbidden in divine law, when Moses says: "You shall not plow with an ox and an ass together," that is, you shall not associate men of different professions together in one office. Hence it is fitting for us to obey both the divine books and the precepts of the holy Fathers, establishing that those who are associated with pontiffs in administrations differ neither in profession nor habit. For those whose pursuits and vows are different cannot adhere and be joined. § 1. But if after this any bishop shall choose a lay agent to administer ecclesiastical property, or shall not entrust it to be governed with the testimony of a steward, truly, as a contemner of the canons and defrauder of ecclesiastical property, he will not only be judged guilty by Christ concerning the property of the poor but will also remain answerable to the council.

C. XXIII. A layman does not have power to establish anything in a church.

Likewise in the Synod of Pope Symmachus, Lawrence, Bishop of Milan, said: It did not please us that a layman should have any power of establishing matters in a church, since the necessity of following remains for him, not the authority of commanding. Likewise in the same council Eulalius, Bishop of the church of Syracuse, said:

C. XXIV. Laymen ought not to dispose of ecclesiastical dignities.

No power to dispose of anything concerning ecclesiastical dignities is read to have been attributed to laymen, however religious they may be.

C. XXV. A layman who usurps the disposition or dominion of ecclesiastical property is held to be sacrilegious.

Likewise Pope Callixtus [II]. If any of the princes or other laymen shall claim for himself the disposition or dominion of ecclesiastical property or possessions, let him be judged sacrilegious.

C. XXVI. In a church which someone builds, let him claim nothing for himself beyond others.

Likewise Gelasius to Bishop Senecio. PART III. The devotion of a pious mind is to be embraced, by which Senilius declares to us that he founded a church on the Viviana estate belonging to his right, which he desires to be consecrated in his name in honor of Saint Vitus the Confessor. Therefore, dearest brother, if you do not doubt that this church pertains to your diocese, it is fitting that it be dedicated according to custom, after the solemn donation has first been conferred which the giver of the aforesaid gift testifies that he destined for the ministers of the church; he is to know without doubt that, apart from access to the procession, which is owed to every Christian, he will have nothing of his own right there.

C. XXVII. Concerning the same matter. The same.

But Trigetius suggested to us by a petitionary representation that on his estate, which is called Sextilianum, he founded for his protection a basilica of the saints Michael the Archangel and Mark the Confessor. And therefore, dearest brother, if it pertains to your parish, render the blessing of the aforesaid basilica with solemn veneration. Nevertheless, let the founder know that he is to claim nothing for himself from this basilica except access to the procession, which is owed in common to all Christians.

C. XXVIII. Concerning the same matter.

Likewise Clement, [letter II to James]. Build churches in suitable and useful places, which ought to be consecrated by divine prayers and burdened by no one.

C. XXIX. Let laymen not cast priests out of churches.

Likewise Leo IV to King Charles. It appears to be contrary to the decrees of the holy Fathers if a secular or lay person is seen to expel priests from the churches in which they were designated or introduced at the time of their ordination. GRATIAN. But if the founders of churches begin to incline toward poverty, let them receive from those same churches support for temporal life. Hence it is read in the Council of Toledo, [IV, c. 37]:

C. XXX. If the founders of churches begin to be needy, let them receive sustenance from those churches.

Whoever among the faithful from their own devotion shall have conferred something from their resources upon a church, if perhaps they themselves or their children shall have been reduced to need, let them receive support for life from the same church for the need of the time. GRATIAN. Therefore, if they do not have power to dispense ecclesiastical resources, much less can they commit the churches themselves to any persons to be governed or take them away from others. § 1. But here it is to be distinguished what right founders of churches have in them, and what they do not have.

They have the right of providing, counseling, and finding a priest; but they do not have the right of selling, giving, or using them as their own. Hence it is found in the Canons:

C. XXXI. The heirs of one who constructed a church ought to bear nothing other than solicitude for it.

Let it be permitted to the sons, grandsons, and more honorable relatives of him who constructed or enriched a church to have this diligence: if they shall foresee that the priest is defrauding anything from the property conferred, let them either restrain him by an honorable agreement or report the matter to the bishop or judge to be corrected. But if the bishop should attempt to do such things, let them take care to intimate them to his metropolitan. But if the metropolitan does such things, let them not delay in bringing them to the ears of the king. § 1. Nevertheless, let the heirs themselves not be permitted to assert the power of their own right over that property, to bring in plunder and fraud, or to presume any violence, but to employ only this much in salutary solicitude: that either no harmful action may attain its harmful end, or that it may receive a penalty or some part of a salutary reward. § 2. But if anyone henceforth shall wish to violate these admonitions, he will restore with disgrace the things wickedly plundered and sustain a sentence of excommunication for one year.

C. XXXII. Let founders of a church present to the bishop those to be ordained in it.

Likewise from the Council of Toledo, [IX, c. 2]. We decree that as long as the founders of churches shall survive in this life, they are to have solicitous care for those places, and those same persons are to present suitable rulers to the bishop to be ordained in those basilicas. But if, in disregard of those founders, the bishop shall presume to ordain rulers there, let him know that his ordination is void and that, to his shame, others whom the founders themselves shall have chosen as worthy are to be ordained in their place.

C. XXXIII. An oratory is not to be taken away from the dominion of its builder.

Likewise from the Roman Synod, [of Eugene II and Leo IV, c. 21]. Let a monastery or oratory canonically constructed not be taken away from the dominion of the builder against his will; and let it be permitted to him to entrust it for its sacred office to whatever priest he shall wish from that diocese, with the bishop's consent, lest he be evil.

C. XXXIV. Concerning the same matter.

Likewise Pope Gregory, [book VII, indiction I, to Secundinus, Bishop of Taormina]. The order of reason does not permit that anyone ought, against the will of the founders, to claim a monastery from their disposition for his own judgment. GRATIAN. Nevertheless, churches ought to be honored by their founders according to the providence and admonition of the bishop. Hence Gregory:

C. XXXV. Let churches be honored by their founders according to the providence of bishops.

It is to be considered that, if the coheirs themselves shall wish to retain them according to the providence and admonition of the bishop, let them cause them to be honored. But if they shall

oppose this, let it remain under the bishop's power whether he permits them to remain or wishes to remove the relics from them.

C. XXXVI. Let the relics be removed from churches if several heirs contend concerning them.

Likewise from the Council of Tribur, [c. 32]. If several heirs shall contend concerning a common church, let the bishop command the sacred relics to be removed and the church to be closed until by common consent and the bishop's counsel they establish a priest there and that from which he may live. PART IV. GRATIAN. Therefore, as is gathered from these authorities, churches are not to be received from the hand of laymen except with the consent of the bishops, according to that statement of the Council of Mainz:

C. XXXVII. Let laymen not cast priests out of a church.

Let laymen not cast priests out of a church, nor establish them in churches without the consent of their bishops.

C. XXXVIII. Without the consent of bishops, let laymen not cast priests out of churches.

Likewise from the Second Council of Chalon, [c. 42]. It has been found that many persons, by the rashness of their own judgment and—what is graver—led by greed, give churches to or take them away from any priests without the consent of their bishops. Hence it is fitting, with the canonical rule preserved, that no one give a church to any priest without the consent of his bishop; and if the priest shall have obtained it justly, let him lose it only for a grave fault before the bishop by canonical severity. GRATIAN. Therefore, just as by the authority of Jerome it is permitted, with the bishop consenting, for monks to receive from the hand of laymen tithes badly possessed by laymen and to hold them with perpetual stability, so also it is permitted for monks, with the consent of the bishops, to receive churches badly detained by laymen in order to put them in order and to provide for them in perpetuity. Hence Urban II:

C. XXXIX. Without the will of bishops, let monks not receive tithes or churches from laymen.

Let monks not receive tithes and churches from laymen without the consent and will of the bishops. But if anything shall have been presumed otherwise, let them be subject to canonical vengeance.

C. XL. Let no one be permitted to convert a monastery into his own right; nevertheless, he has power to hand it over to another for putting in order.

Likewise from a decree of Pope Sylvester. Let no king or any person be permitted to hand a monastery into his own right, except to another monastery, or to exchange it except with another monastery, or to sell it by any contrivance. But if this shall have been done, it will not be valid, but let the monastery itself be restored to its former state.

C. XLI. No one is forbidden, with the counsel of the bishop and the brothers, to subject a monastery to another for its improvement.

Likewise from a decree of Boniface. PART V. If anyone wishes to place his monastery in another place for its improvement, let it be done with the counsel of the bishop and his brothers, and let him leave a priest in the former place for the ministries of the church.

[PALEA.

C. XLII. Let those who presume to tonsure persons by deceiving them be subjected to public penance.

Likewise from the Council of Mainz. PART VI. This sacred assembly indeed established that bishops or abbots who, intent not upon the fruit of souls but upon avarice and shameful gain, have tonsured any persons by deceiving them and have taken away their property by such persuasion are to be subjected to canonical penance as followers of shameful gain. But let those who, having been enticed, laid aside their hair be compelled to persevere in what they began, and let their property be restored to their heirs.]

C. XLIII. Without the will of the brothers, an abbot cannot substitute for himself anyone from his relatives.

Likewise from the same. The congregation ought to elect an abbot for itself after the death of its abbot, or while he is living if he has departed or sinned. For the bishop ought not violently to retain an abbot in his place. But he himself cannot ordain anyone from his relatives or friends without the will of the brothers.

Causa XVII

GRATIAN. A certain priest, weighed down by illness, said that he wished to become a monk; he renounced the church and benefice into the hand of the advocate. After he recovered, he immediately denied that he would become a monk and reclaimed the church and benefice. (Question I.) Here it is asked first whether he is bound as liable to a vow, or whether he is permitted to depart from the purpose of his heart. (Question II.) Second, whether the church and benefice which he previously rejected by his free will are to be restored to him. (Question III.) Third, if it had happened that he handed himself and his property over to the monastery, whether with the abbot's permission he would be permitted to return to his own property. (Question IV.) Fourth, if he went back without the abbot's permission, whether his property is to be restored to him by the abbot.

Question I

GRATIAN. PART I. That one is not permitted to depart from a vow is proved by many authorities. For the Prophet says: "Vow, and render to the Lord your God."

C. I. Things which are vowed to God are necessarily to be rendered.

Likewise Augustine. There are certain things which we owe even when we do not vow them; certain others which we do not owe unless we vow them, but after we promise them to God, we are necessarily constrained to render them.

[C. II.] Likewise Jerome.

For those who have vowed, not only to marry but even to wish to marry is damnable.

C. III. One who withdraws himself from God by recoiling from a vow is worthy of punishment.

Likewise Gregory in book I of the *Register*, [book I, letter 33, to Venantius]. Ananias had vowed to God monies which, afterward conquered by the devil's persuasion, he withheld. But you know with what death he was punished. Therefore, if he who took away from God the coins which he had given was worthy of danger of death, consider how great a danger you will be worthy of in the divine judgment, you who withdrew from almighty God not coins but yourself, whom you had devoted to Him under the monastic habit.

C. IV. Those who refuse to perform the good things which they conceive fall before the eyes of God.

The same on Ezekiel, [book I, homily 3]. Those who do good things, if they resolve to do better things and after resolving do not perform them, although they persevere in their former good things, have nevertheless fallen in the sight of God because of their resolution. Likewise: § 1. There are those who resolve to relinquish all things, subject themselves to God's service, and restrain themselves with the bridle of chastity; but when they see others have fallen after undertaking chastity, by withdrawing themselves they lose their merit. GRATIAN. Therefore, if after a vow each person is necessarily compelled to discharge what he vowed; if for those who have vowed not only to marry but even to wish to marry is damnable: it is evident that this priest is to be compelled to fulfill his vow, and that not only failing to become a monk but even wishing not to become a monk is damnable for him. § 1. But that he is to be numbered among those who vow is evident from the words of Augustine, who says: "I said, I shall confess, etc. Great is the mercy of God, that He forgives sins upon the promise alone. For he has not yet pronounced it with his mouth, and nevertheless God already hears in his heart; for a vow is reckoned as a deed." Therefore, just as the Prophet is reckoned among those who vow because he said, "I shall confess," so this man is also to be numbered among the same because he said, "I shall become a monk." These things are answered thus: It is one thing to conceive a purpose in the heart and also announce it with the mouth; it is another to make oneself liable to a vow by a subsequent obligation. § 2. Therefore, because this man simply announced with his mouth the purpose of his heart, but did not hand himself over to a monastery or abbot, nor did he write a promise, he is by no means held liable to a vow.

Question II

GRATIAN. Hence Alexander II:

C. I. No one is compelled to remain in a monastery unless he made profession into the hand of the abbot.

Cosaldus the priest, once oppressed by illness in the heat of suffering, promised that he would become a monk, yet he did not hand himself over to a monastery or abbot, nor did he write a promise, but he renounced the benefice of the church into the hand of the advocate. But after he recovered, he immediately denied that he would become a monk. Wherefore, because both the Rule

of blessed Benedict and especially the canonical institution of our father and predecessor Saint Gregory the Pope forbid a man to be made a monk before a probation of one year, we judge and by apostolic authority command that the aforesaid priest receive, have, and quietly retain the benefice and altars.

C. II. A wife taken after a purpose of continence ought not to be dismissed.

Likewise Augustine to Count Boniface, [letter LXX]. We know, we are witnesses, that you desired to relinquish all the public activities by which you were occupied, to betake yourself to holy leisure, and to live in that life in which the servants of God, the monks, live. Therefore, while we rejoiced that you were in this purpose, you sailed away and took a wife. If you did not have a spouse, I would say to you what we also said to the people of Tubunae: that you should live continently in chastity. But a wife is an impediment to my exhorting you to that life, without whose consent you are not permitted to live continently; because, although you ought not to have taken her after those words concerning Tubunae, nevertheless, knowing nothing of them, she innocently and simply married you. GRATIAN. Behold, this man conceived in his heart that he would become a monk and pronounced with his mouth that he wished to betake himself to holy leisure; nevertheless, he was not afterward compelled to undertake what he conceived in his heart and pronounced with his mouth. That authority of Alexander, following the institution of blessed Gregory and blessed Benedict, grants a year to those to be tested who are known; but to the unknown it concedes three years. Hence in the Council of Toledo:

C. III. Let no unknown person assume the monastic habit before three years.

If any unknown person shall wish to enter a monastery, let the habit of a monk not be furnished before three years. And if within three years he is sought by his lord as either a slave, a free person, or a tenant, let him be restored to him with everything he brought, yet after a pledge of impunity has been received. But if he shall not have been sought within three years, afterward he cannot be sought, unless he is so far away that he cannot be found.

Question III

GRATIAN. But as to the question whether after the handing over it is lawful for him, with the abbot's permission, to return to his own property, it is easily shown that this cannot be done. For returning itself is criminal. But one who ceases to oppose a manifest crime when he can do so consents to it. Yet this abbot not only does not oppose it, but even by permitting it becomes an abettor. Therefore the abbot is not permitted to give anyone permission to go back, and thus that person is not permitted to go backward, because from the time he once subjected himself to the abbot, he can do nothing without the abbot's permission.

Question IV

GRATIAN. PART I. But if he shall have departed from the monastery without the abbot's permission, it is asked whether his property is to be restored to him or not. But neither an abbot nor anyone else

is permitted in any way to alienate possessions and property handed over to a church. Hence Pope Symmachus: "Possessions which each person, etc." And again:

C. I. Let one who presumes to alienate anything from the right of a church be deprived of honor.

Whatever bishop, priest, or deacon, forgetful of God and unmindful of this decree, acting contrary to the enactment, shall attempt to alienate a great or small estate of a church or anything from the right of a church, let the donor, alienator, and seller be punished by loss of his honor.

[PALEA.

C. II. Likewise Gregory to Anthemius the Subdeacon, book XI, letter 31.

No reason permits that what is known to have been given for common utility be applied to anyone's private uses.]

C. III. One who thinks that what he conferred upon a church is to be recalled incurs the crime of sacrilege.

Likewise Ambrose in book [II] *On Penance*, [c. 9]. There are those who, after they conferred their resources upon a church by a tumultuous impulse of mind rather than by a perpetual judgment, later thought that they were to be recalled. For them neither the first reward nor the second is acceptable, because the first had no judgment and the second had sacrilege. There are those whom it has repented to have divided their resources among the poor. Thus those who do penance ought to fear this alone: lest they do penance for penance itself.

C. IV. One who contends to retain things left to sacred places commits sacrilege.

Likewise Gregory to Sabinus the Subdeacon, [book VIII, letter 6]. It is sacrilege and contrary to law if anyone shall attempt, by efforts of a depraved will, to retain for his own advantage what is left to venerable places.

C. V. Those who alienate the resources of a church are judged sacrilegious.

Likewise Bishop Lucius to all Bishops, [letter I, c. 6]. We anathematize all plunderers of a church and alienators of its resources, drive them from the thresholds of the same mother church by apostolic authority, condemn them, and judge them to be sacrilegious; and not only them but all who consent to them, because not only those who act are judged guilty but also those who consent to those acting. For an equal punishment embraces both actors and consenters.

C. VI. Let one who shall attempt to break the boundaries of a church be excommunicated.

Likewise Nicholas to all Bishops. PART II. Just as was established in ancient times by the holy Fathers, we establish that a greater church is to have sixty paces around it, but a chapel or smaller church thirty. § 1. But whoever shall attempt to break their boundary, or shall remove from it the person of a man or his goods—unless he shall be a public robber—let him be excommunicated until he amends and restores what he plundered.

C. VII. Let what is paid as amends for the violated immunity of a church be paid to the altar.

Likewise from the Council of Tribur. If anyone commits a fight in the atrium of a church or shall commit homicide, whatever is to be paid as amends for the violated immunity is to be paid to the altar, to whomever that church shall belong.

C. VIII. No one is permitted to carry a man off from a church.

Likewise Augustine to Boniface, [letter CLXXXVII]. I marvel how suddenly the enemy's battering ram broke through the wall of faith. For I know with what religious reverence you have always venerated the church. At whose instigation did you do this—you carried off a man from a church? If a fugitive belonging to you had perhaps presumed to go to your friend, he could undoubtedly have merited pardon by reason of the intercessor. Therefore, if a friend is appealed to, why is God offended? But if reliance is also placed on power, consider King Nebuchadnezzar, who because of pride was changed from a man into an ox. I write these things not to confound you, but to admonish you as a most beloved son. Therefore recall unharmed to the church the man whom you, most irreligiously, carried off. But I have forbidden the offering of your household to be received by the clerics, and I forbid communion to you until, when the penance defined by me for your audacious deeds or error has been performed and pardon has been granted for this deed, you offer to God a worthy sacrifice with a contrite and humbled heart.

C. IX. Let no one dare to drag away one fleeing to a church.

Likewise from the book of Capitularies, [book V, c. 90]. Let no one dare to drag away an accused person fleeing to a church, nor to hand him over from there to punishment or to death, so that the honor of churches may be preserved; but let the rulers strive to obtain his peace, life, and limbs; nevertheless, let him lawfully pay composition for what he did unjustly.

C. X. Let one who has violently carried anyone off from a church be barred from entering a church.

Likewise Gelasius to Bishops Victor, Constantinus, Martyrius, Felicissimus, Serenus, and Timotheus. Our brother and fellow bishop Epiphanius has reported to us in his account that Benenatus and Maurus, citizens of the city of Beneventum, sprang forth in contempt of religion with exceedingly bitter and punishable contumacy: they did not permit a member of their curia who had fled to the enclosure of a church to be safe even there or secure from their injury, daring, by an incursion of rash intent, to commit what it has never been lawful even for powers or princes to perpetrate, namely, violently to drag away a man situated in the sanctuary, struggling and crying out, after taking advantage of the priest's absence. Insofar as he disclosed by his report to us, he rightly judged them to be unworthy of holy communion. And if the commission of so great a crime is truly established, our authority also assents in this matter. For a man ought not by right to be admitted to make supplication where he did not hesitate to commit sacrilege. Indeed, let no one suppose that within thresholds appointed to such great veneration both things are lawful for him at the judgment of his own will, so that he may claim for himself both humility and fury. And therefore, dearest brothers, if a manifest complaint shows the aforesaid men to be guilty, bar them from all the churches of your parishes by the authority of our command, so that not only may those who are proved to have sprung

forth in injury to holy places deservedly receive punishment according to the quality of their deed, but others also may be recalled from such presumption by fear of that vengeance.

C. XI. One who violates churches is not worthy to enter them.

The same to Bishop Epiphanius. We directed a command to the other bishops that they judge those who are reported to have violated churches to be unworthy of access to them.

C. XII. One who lays waste God's church and persecutes its priests is judged sacrilegious.

Likewise Pope Pius, [letter II to the Italians]. Just as one who lays waste God's church and despoils and invades its estates and gifts becomes sacrilegious, so one who persecutes its priests is judged sacrilegious. § 1. Therefore fornication is not a graver sin than sacrilege. And just as the sin committed against God is greater than that committed against a man, so it is graver to commit sacrilege than to fornicate.

C. XIII. With what penalty one who has attempted to vex estates dedicated to the uses of a church is to be struck.

Likewise Urban, [in the letter to all bishops, c. 2]. All must take heed lest estates dedicated to the uses of the heavenly mysteries be vexed by certain persons rushing upon them. But if anyone shall have done this, after the bitterness of the punishment due—which by right is to be brought forth against the sacrilegious—let him be condemned to perpetual infamy and handed over to prison, or reserved for exile by perpetual deportation.

[PALEA.

C. XIV. Likewise Pope Hyginus.

If anyone shall have burned a church with fire, let him do penance for fifteen years, diligently restore it, and distribute his own price to the poor.]

C. XV. One who steals the ornaments of a church is proved to be like Judas.

Likewise Clement, [letter II to James]. If perhaps any priest or deacon shall have sold a stolen linen cloth or veil of the sacristy, he will be reckoned like Judas Iscariot. Let one who shall have done this work because of greed know that he will undergo the punishment of the aforesaid Judas.

[PALEA.

C. XVI. Concerning the same matter.

Likewise from Theodore's Penitential. Ecclesiastical money that has been stolen or plundered is to be restored fourfold; that of the people, however, is to be doubled. If anyone shall have stolen anything from the ministry of the holy church, let him do penance for seven years, three on bread and water.]

[PALEA.

C. XVII. Concerning the same matter.

Likewise from the Roman Penitential. If any cleric shall have committed a capital theft, that is, shall have stolen a quadruped, broken into a house, or stolen anything of greater value, let him do penance for seven years; a layman, for five. But if anyone shall have committed a theft of lesser things once or twice, let him restore it to his neighbor and do penance for one year on bread and water; and if he shall not have been able to restore it, let him do penance for three years.]

C. XVIII. One who plunders the money of a church commits sacrilege.

Likewise Anacletus, [letter I, c. 2]. One who plunders the money of his neighbor works iniquity; but one who shall have taken away the money or property of a church commits sacrilege.

C. XIX. Let a cleric who presumes to beat his servant or disciple fleeing to a church be separated from the church.

Likewise from the Council of Lleida, [c. 8]. Let no cleric dare to drag away his servant or disciple who has fled to a church, or presume to flog him. But if he shall have done this, let him be separated, until he worthily does penance, from the place to which he did not give honor. § 1. But if any clerics shall have burst forth into mutual slaughter, let it be more strictly punished by the pontiff according as the dignity of their offices has suffered dishonor in such an excess.

C. XX. Let one who drags away a fugitive from the atrium or porticoes of a church be excommunicated.

Likewise from the Council of Tribur, [c. 20]. If any contumacious or proud person shall not have fear of God or reverence for holy churches, and by force shall in any way have dragged away from the atrium of a church or from porticoes adjoining a church his fugitive servant or one whom he himself pursued, let him pay nine hundred solidi as composition for the immunity, and let him himself be punished with public penance according to judgment. GRATIAN. Therefore it is sacrilege whenever anyone violates a sacred thing, either by taking a sacred thing from a sacred place, a sacred thing from a place not sacred, or a thing not sacred from a sacred place. § 1. One who shall have laid violent and impious hands upon a cleric is also said to commit sacrilege. § 2. Moreover, sacrilege itself contains a twofold penalty, namely a monetary penalty and excommunication. The monetary penalty is to be paid to those to whom the complaint of sacrilege belongs. Hence Pope John VIII writes to all Bishops:

C. XXI. Concerning the manifold kind of sacrilege and its penalty.

Whoever shall have been found guilty of sacrilege is to pay thirty pounds of assayed, most pure silver as composition to bishops, abbots, or the persons to whom the complaint of sacrilege shall justly belong. § 1. Sacrilege is committed if anyone shall have broken into a church, the thirty ecclesiastical paces that are around a church, or houses that shall have been within the aforesaid paces, plundering or taking anything away from there; or if anyone shall have inflicted injury or the taking away of property upon clerics not bearing arms, monks, persons devoted to God, or any ecclesiastical persons. Chapels that are within the circuit of the walls of castles are not placed under this observance of thirty paces. § 2. Similarly, sacrilege is committed by taking a sacred thing from a sacred place, a thing not sacred from a sacred place, or a sacred thing from a place not sacred. The same: § 3. If anyone shall have violated the house of God and, without the permission of him to whom it is known

to have been entrusted, taken anything away from there, or shall have done injury to ecclesiastical persons, let him know that he will be deprived of communion until, having been lawfully admonished in an assembly, he makes satisfaction. But if after a second and third admonition before the bishop he shall have refused to make satisfaction, let him be held liable by all to the peril of sacrilege, so that, according to the Apostle, he is not to associate with any of the faithful. The same: § 4. Those who break into monasteries, places dedicated to God, and churches, and carry away deposits or any other things from them, are to pay the loss ninefold, the immunity threefold, and, as sacrilegious persons, are to be subjected to the canonical sentence.

C. XXII. Let a layman who seizes a bishop who has not been canonically judged be excommunicated.

Likewise Alexander II. If henceforth any one of the chief men, or of whatever dignity or whatever order of laymen, shall have seized or struck a bishop, or by any force expelled him from his own see, unless perhaps he had been canonically judged, let the authors and helpers of so great a crime be anathematized, and let their goods be handed over perpetually to the right of that church. § 1. But if anyone shall have presumed these same things against a priest or any cleric of the lower grades, he will be subject to canonical penance and deposition. If he shall be contumacious, let him be excommunicated.

C. XXIII. Let those who flog priests be excommunicated after a third admonition if they have not recovered their senses.

Likewise Pope Nicholas to Thado, Archbishop of Milan. Concerning the floggers, killers, and plunderers of priests—those, namely, who are by no means restrained by the secular arm—it is pleasing that, according to the Lord's precept, they be admonished a second and a third time with fraternal love. If they shall not have heard you, we grant permission, when the church has assembled, to deprive them of holy communion and—if, remaining in their obstinacy, they shall perhaps have despised priestly admonitions—to cut them off from the body of the church under the prohibition of an anathema. § 1. Know that even these, when at length they have recovered their senses and worthy satisfaction has first been made, can be recalled into the bosom of holy mother church.

[PALEA.

C. XXIV. Likewise from the Council of Mainz under Rabanus, c. 24.

Let a penance of twelve years be imposed according to the canons upon one who has killed a priest; or, if he shall have denied it, if he is free, let him swear with seventy-two persons; but if he is a slave, let him purge himself upon twelve glowing plowshares. If convicted of the offense, however, let him lack the military belt until the last time of his life and remain without hope of marriage.]

[PALEA.

C. XXV. Likewise from the Council of Tribur.

Let priests not travel unless clothed with a stole or orarium. And if on a journey they are despoiled, wounded, or killed while not clothed with a stole, let compensation be paid at the single rate; but if with a stole, at the threefold rate.]

[PALEA.

C. XXVI. Likewise from the same, c. 5.

Let all killers of priests be discharged by payment of composition to the bishop to whose parish they belong, in such a manner, namely, that the bishop give half of his wergeld to the uses of the church over which he presided and justly distribute the other half in alms for him, because no heir of his seems nearer to us than he who joined him to the Lord.]

C. XXVII. Let those who kill clerics be fined according to the diversity of their grades.

Likewise from book V of the Capitularies, [c. 25]. One who has killed a subdeacon is to pay three hundred solidi as composition; one who has killed a deacon, four hundred; a priest, six hundred; a bishop, nine hundred; a monk, four hundred.

[C. XXVIII.]

Likewise from book VI of the same. One who has killed a monk or cleric is to abandon arms and serve God in a monastery all the days of his life, never to return to the world, and is to perform public penance for seven years.

[C. XXIX.]

Likewise Pope Innocent II, [in the Lateran Council, c. 15]. If anyone, at the devil's persuasion, shall have incurred the vice of this sacrilege, namely that he has laid violent hands upon a cleric or monk, let him be subject to the bond of anathema; and let no bishop presume to absolve him, unless the peril of death is urgent, until he is presented before the apostolic presence and receives its command. PART III. GRATIAN. But one who shall have removed anyone by force from a church, or brought any injury in the church itself upon its place or worship, its priests or ministers, will be accused as for a public crime and lèse-majesté; and, if convicted or having confessed, he will be struck by the rulers of the province with a capital sentence, as is read in book I of the Code, title *Concerning Bishops and Clerics*, in the law "If anyone shall have burst forth into this kind of sacrilege," and in the Digest, title *On the Julian Law concerning Extorted Monies*, in the final law. § 1. Those also commit sacrilege who either unknowingly commit acts against the sanctity of divine law, or violate and offend it through neglect; or who dispute concerning the prince's judgment, doubting whether he whom the prince has chosen is worthy; or who, within a province in which they are reckoned among the provincials and citizens, desire the office of carrying on and undertaking an administration, in book IX of the Code, title *Concerning the Crime of Sacrilege*. § 2. Similarly, no one is permitted to dispute concerning the judgment of the Supreme Pontiff. Hence Pope Nicholas to all Bishops:

C. XXX. No one is permitted to judge the Roman Church or reconsider its sentence.

No one is permitted to judge concerning the judgment of the Apostolic See or to reconsider its sentence, namely because of the primacy of the Roman Church, divinely placed by Christ's gift in blessed Peter the Apostle. GRATIAN. One who entrusts public offices to Jews also incurs the guilt of sacrilege. Hence in the Fourth Council of Toledo, [c. 64]:

C. XXXI. Those who entrust public offices to Jews commit sacrilege.

The holy council established that Jews, or those who are from the Jews, are by no means to seek public offices, because under this occasion they do injury to Christians. Therefore let the judges of the provinces, together with their priests, suspend the surreptitious grants fraudulently left in place, and not permit them to exercise public offices. But if anyone shall have permitted this, let excommunication be pronounced against him as against a sacrilegious person, and let the one who shall have obtained the office by surreption be assigned to public beatings. PART IV. GRATIAN. But lest reverence for religion defraud masters of their right if servants fleeing to the enclosures of a church are by no means dragged away from there, it was established by the sacred canons that, after an oath of impunity has been furnished by the master, the servant is to be restored to him even against his will. Hence Pope Gelasius writes to Bishop Boniface:

C. XXXII. After security has been furnished, servants who flee to a church are to be restored to their masters.

If servants fearing their masters shall have fled to the enclosures of a church, they ought to seek intercession, not hiding places, lest this very presumption of delay increase their rashness in resisting. For our son, the distinguished man Peter, complains that his servant has remained for a rather long time in the church of Saint Clement; and when he had arranged for assurances to be furnished to him, the servant was unwilling to depart for any reason. Therefore, when the man of the aforesaid Peter who has now been sent comes together with the person whom you shall choose to send, after he has furnished assurances concerning the servant's impunity, you will cause him immediately to return to his master by every means; or, if perhaps he shall persist in this obstinacy, after an assurance has been furnished to him, let him be restored against his will.

C. XXXIII. After security has been received, fugitives are to be compelled to leave a church in order to render an account.

The same to John, Bishop of Vibo. The wife and daughters of Felix have arrived at Rome, because it was fitting thus. Indeed, we commanded this same man, who first betook himself to the basilica of the Barbarians and boasted that he had good causes, to depart on this condition: that, if he faithfully and reasonably set forth his acts, we would permit absolutely nothing harsh or severe to be done to him. Otherwise, if he were proved to have acted against good faith and his master's interest, he was to impute it to himself and be subject to a fitting disposition. When our son Ortasius, a distinguished man, arrived, he was so convicted concerning every single matter that he could not open his mouth, and with his own voice he confessed that the things charged against him were true; and therefore he is held committed to custody.

C. XXXIV. Let a servant upon whom a Jew has impressed the sign of circumcision while he was a Christian be rescued into freedom; otherwise, let him be restored from the church to his master against his will.

The same to the Bishops of Syracuse, Constantius, and Laurentius. Judas, who is of the Jewish profession, has reported that a slave belonging to his right, whom he asserts that he purchased a few years ago, has now fled to the church of Venafrum, as the tenor of the attached petition shows, because the slave says that, though a Christian from infancy, the sign of circumcision was recently

impressed upon him by the aforesaid master. Therefore let your careful concern diligently examine between the two the truth of the matters in good faith, so that neither religion may seem to have been profaned nor a servant, by falsely alleging this objection, may strive to evade the rights of the ownership properly belonging to him.

C. XXXV. A fugitive is not to be dragged away from the atrium of a church, which is enclosed by thirty paces, unless security has first been given.

Likewise from the Twelfth Council of Toledo, [c. 10]. The holy council defined that no one is to dare to drag away those fleeing to a church or residing there, or inflict any kind of injury, loss, or spoliation upon those residing in the holy place; but rather that it is to be entirely lawful for those who seek churches to proceed thirty paces from the doors of the church, within which thirty paces reverence for each church is to be defended throughout its whole circuit—yet in such a way that those who flee to it are by no means to withdraw into foreign houses or houses far separated from the church, but, proceeding within this number of thirty paces without the shelter of foreign houses, they will obtain access by which they may go out to fitting places for the use of natural necessity, and those who have committed themselves to the Lord's enclosures to be defended may be constrained by no event of necessity. § 1. But if anyone shall have attempted to violate this decree, let him both be subject to ecclesiastical excommunication and be struck by a sentence of royal severity. § 2. But if, in accordance with the institutes of the ancient canons, those who seek the persons who made refuge at a church shall have rendered oaths, and the priest of that church shall not have drawn them away from the doors of the church, either the flight of such persons, if it shall occur, is to be charged to the priest, or a sentence for the losses is to be imposed upon priests of this kind according to the prince's choice.

C. XXXVI. Before security has been given, a fugitive is not to be compelled to leave the atrium of a church.

Likewise from the Council of Orléans, [I, cc. 3 and 5]. We establish that what the ecclesiastical canons have decreed and Roman law has constituted is to be observed: that it is entirely unlawful to drag them away from the atria of a church or the bishop's house, or even to consign them to another, unless, after oaths have been given upon the Gospels, they have been made secure from death, mutilation, and every kind of punishment, so that the criminal may come to an agreement concerning satisfaction with him to whom he is liable. But if anyone shall have been convicted of violating his oaths, as guilty of perjury let him be separated not only from the communion of the church and of all clerics, but also from the common table of Catholics. But if he to whom the accused is liable shall have wished composition to be made to him while a claim is being made, and the accused himself, having been driven by fear, shall have departed from the church, let him not be sought from the clerics of the church. § 1. A servant also who has fled to a church because of any offense, if he shall have received an oath from his master concerning the offense committed, is immediately to be compelled to return to the service of his master; and after he has been consigned to his master upon the giving of an oath, if he shall be proved to have suffered some punishment for the same offense for which he is defended, let the master be held excluded from the communion and common table of Catholics for contempt of the church and violation of faith. But if a servant defended by the church for his offense, when the clerics demand it, shall have received assurances of impunity from his

master, and is unwilling to depart, let it be lawful for the master to seize him. PART V. GRATIAN. For under the occasion of religion a servant ought not to despise his master and forsake his service. Hence it is read in the Council of Gangra, [c. 3]:

C. XXXVII. Let a servant not dare to despise his master under the occasion of religion.

If anyone under the occasion of religion teaches another's servant to despise his master and forsake his service, and has not rather taught him to serve his master in good faith and with every honor, let him be anathema.

C. XXXVIII. Let one who for the sake of religion has taught a servant to despise his master be corrected most severely.

Likewise from the Council of Pope Martin, [c. 47]. If anyone for the sake of religion should teach another's servant to despise his master and withdraw from his service, let him be reproved most severely in all things.

C. XXXIX. Let the necessity that compels the property of a church to be alienated be made known to the primate.

Likewise from the Council of Carthage, c. 31. Let no one alienate the property of a church. But if it has no revenues and some excessive necessity compels it, we determine that this is to be made known to the primate of that province, so that with a fixed number of bishops he may judge whether it is to be done. And if so great a necessity of the church presses that it cannot consult the primate beforehand, let it at least summon the neighboring bishops, taking care to report every necessity of the church to the council. But if it shall not have done this, when his honor has been lost, let the seller be held guilty before God and the holy council.

C. XL. Whatever an abbot has sold without the bishop's permission is to be rendered void.

Likewise from the Council of Agde, [c. 56]. In sales which abbots presume to make, let this form be observed: whatever shall have been sold without the bishop's permission is to be recalled to the bishop's control. § 1. But it is not lawful for an abbot to manumit slaves given to monks. For we think it unjust that, while the monks perform daily rural labor, their servants should enjoy the leisure of freedom. PART VI. GRATIAN. Even if a possession of a monastery shall have been given by an abbot with the bishop's consent, the gift will be of no force, unless perhaps the gift was made for erecting the fabric of a church. In that case it is lawful for him to give only as much as the walls of the church enclose. Hence Gregory writes, [book VII, indiction 1, letter 33, to John, Bishop of Squillace]:

C. XLI. By no title can the property of a monastery be separated from its right.

The monks of the aforesaid monastery complained to us that their abbot, under the pretext of constructing a church, conceded to your fraternity by title of gift land within the fortress of Squillace which extends six hundred feet. Therefore we will that as much as the walls of the constructed church can surround be claimed for the right of the church. But whatever shall be outside the walls of that church is to return without any difficulty to the right of the monastery, because neither the

statutes of worldly laws nor of the sacred canons permit the property of a monastery to be separated from its right by any title. On that account, restore without any delay the gift of that land, which was made contrary to reason.

[PALEA. C. XLII.

Therefore we establish that this page of our writings is to be preserved firm and inviolate by you and by all bishops for all future time, so that, with the Lord's help, they may be content only with the right of their own church, and monasteries may in no way be subjected to ecclesiastical conditions, forced services, or any secular services; may serve under no canonical dues; but, with vexations removed, may perform the divine work with the greatest devotion.] PART VII. GRATIAN. But it is to be noted that it is one thing to convert the property of a church to one's own use or that of one's relatives—which pernicious greed the sacred canons everywhere forbid and show to be damnable—and another when, from the dispensation of charity, provision is made for human weakness, so that his former property is restored to one who disdains to remain in a sacred purpose. We read that some of the saints did this, not so much by the law of the forum as by the law of heaven. For blessed John the Evangelist restored gold and gems to two young men who repented that they had relinquished all their property for Christ and distributed it to the poor, so that they might buy back for themselves everything they had sold. But it is objected: Blessed John did not restore offerings which had already been distributed to the poor, but supplied other things in compensation, which had never been counted among the resources of the poor or of churches. Similarly, if an abbot or bishop shall have anything that is not yet numbered among ecclesiastical resources, following the example of blessed John let him give those things to the one departing, but let him retain the things offered to the church. § 2. Therefore another example follows, by which the same things that were taken away are shown to have been laudably restored. Augustine in sermon [II] *On the Life of Clerics*:

C. XLIII. The church ought not to receive what is offered to it after a son has been disinherited.

Whoever wishes to make the church his heir after disinheriting his son, let him seek another who will receive it, not Augustine; indeed, with God's favor, he will find no one. How praiseworthy was the deed of Saint Aurelius, Bishop of Carthage! For a certain man, when he had no children and did not expect any, gave all his property to the church, retaining the usufruct for himself. Children were born to him; the bishop restored to him, though he did not expect it, the things that he had given. The bishop had power not to restore them, but by the law of the forum, not by the law of heaven. GRATIAN. Behold, offerings are sometimes restored lawfully and laudably. Yet this example does not show that his property is to be restored to one departing. For it is one thing to persist in the profession of one's life, another to depart from the purpose of one's order. If Saint Aurelius restored the offerings to one remaining in the lay habit because he received children after the offering, it does not follow that their property is to be restored to those going into apostasy, from whom necessities would more usefully be withdrawn so that, compelled, they might return to the order from which they departed. But just as we are commanded to furnish necessities to enemies and persecutors, and just as we are admonished by the Apostle to redeem the time so that we may be free for prayer more readily, so—lest the church suffer scandal, lest the one departing plunge into worse things, lest on account of his property he blaze forth to the ruin of the monks or the burning of the monastery—it is

more laudable, I do not say that his property is restored to him, but that it is permitted to be taken away, than that those things be inflicted by him.

Causa XVIII

GRATIAN. A certain abbot who was consecrated as bishop had previously conferred much upon his monastery and afterward acquired more in the episcopate. When the brothers sought a successor for him, the bishop of the place wished to insert himself into the election so that through him an abbot might be ordained in the monastery; the brothers resisted. (Question I.) It is asked whether the monastery can seek the things acquired by the bishop, and whether the episcopal church can claim for itself the things that had been handed over to the monastery. (Question II.) Second, whether the abbot is to be elected and ordained by the bishop, or is to be instituted only by his own brothers.

Question I

GRATIAN. The first question is settled in the Council held at Altheim, in which it is read to have been established thus:

C. I. One who is ordained bishop from being a monk is to leave to the monastery what he had before consecration, but to his own church what he acquired after consecration.

It was established, and reasonably confirmed by the synod according to the holy Fathers, that a monk whom canonical election releases from the yoke of the rule of monastic profession and sacred ordination makes a bishop from a monk may afterward, as a lawful heir, have power by right to claim a paternal inheritance for himself; but whatever he had acquired or appeared to possess, let him leave to the monastery and to the judgment of his abbot, who had been his abbot according to the Rule of Saint Benedict. For after he is ordained bishop, according to the sacred canons let him restore to the altar at which he is sanctified and given a title whatever he shall be able to acquire.

Question II

GRATIAN. PART I. The authority of the Council of Toledo [IV, c. 50] settles the second question, saying:

C. I. Abbots and other offices ought to be instituted and ordained by bishops.

Let bishops claim for themselves only that in monasteries which the canons command, that is, to admonish monks toward holy conduct, to institute abbots and other offices, and to correct deeds outside the rule. But if they shall presume anything against monks that is forbidden by the canons, or attempt to usurp anything from the property of a monastery, the sentence of excommunication will not be absent from them. PART II. GRATIAN. To the contrary Gregory writes to Castorius, Bishop of Rimini:

C. II. Let the congregation of a monastery, not the bishop, institute the abbot.

Let an abbot in a monastery not be ordained by the bishop or by any outsider, nor let Mass be celebrated there by the bishop, so that it may be subject to no church.

[C. III.]

The same to Bishop Castorius, [book IV, letter 43]. We will that no other be ordained abbot over any monastery except the one whom, by common consent, the congregation shall have requested as worthy in morals and in the practices of monastic discipline. But we entirely forbid public Masses to be celebrated in monasteries by bishops or clerics.

C. IV. He ought to be instituted abbot whom his congregation and the owner of the possession shall have requested to be ordained.

Likewise Pope Pelagius to Mellitus the Subdeacon. We will that he be ordained abbot in the monastery whom the election of the monks from their own congregation, the owner of the possession, and—what is to be observed more—the order and merit of his life shall have requested to be ordained over them.

C. V. Concerning the liberty of monks.

Likewise Gregory to all Bishops. How necessary it is to provide for the quiet of monasteries, etc. And below: § 1. Therefore, in the name of our Lord, by the authority of blessed Peter, prince of the Apostles—whose place we occupy in presiding over this Roman Church—we forbid any bishop or secular person hereafter to presume in any manner or on any occasion to diminish the revenues or charters of monasteries, or the cells or estates pertaining to them, or to commit any fraud or intrusion. And below: § 2. But when the abbot of any congregation has died, let no outsider be elected, but one from the same congregation whom the concordant society of the brothers shall have elected for itself by its own will. But if they shall not have been able to find a suitable person among themselves, let them carefully choose for themselves one to be ordained from other monasteries. And below: § 3. This also is equally to be observed: that monks ought not, against the abbot's will, to be taken from there to govern other monasteries, to sacred orders, or to the office of the clergy. And below: § 4. Let no one retain a monk in any church or promote him to any honor without the testimony and concession of the abbot. § 5. Therefore we establish that this page of our writings is to be preserved firm and inviolate by all bishops for all future time, so that, with the Lord's help, they may be content only with the right of their own church, and monasteries may in no way be subjected to ecclesiastical conditions, forced services, or any secular services; may serve under no canonical dues; but, free from vexations and every burden, may perform the divine work with the greatest devotion of mind.

C. VI. Let bishops not celebrate public Masses in monasteries or inflict any burden upon them.

The same to Castorius, Bishop of Rimini. From the report of Abbot Luminosus we have learned that in very many monasteries monks have suffered many prejudices and burdens from prelates. Therefore the provision of your fraternity ought to arrange for their future quiet by a salutary ordinance, so that those dwelling in them in God's service may persevere with a free mind, with

grace assisting them. We also entirely forbid public Masses to be held in a monastery, lest any occasion for an assembly of the people be furnished within the retreats and dwellings of God's servants, because this is not expedient for their souls. Nor may a bishop dare to place a chair there, to exercise any power of commanding, or to make any ordinance, however slight, unless he shall have been asked by the abbot, so that the monks may always remain under the power of their abbots and, free from vexations and every burden, may perform the divine work with the greatest devotion of mind.

C. VII. Let a baptistery not be permitted to be made in a monastery.

Likewise Pope Gelasius. We commanded some time ago that the baptistery ought to be removed from the monastery of Saint Andrew, which is above Mascalae, because of the disturbance of the monks, and that an altar be founded in that same place where the fonts are; the completion of this matter has been delayed until now. Therefore we admonish your fraternity to introduce no further delay after receiving our letters, but, when the place of those fonts has been filled in, let an altar be founded there without any delay, so that it may be lawful for the aforesaid monks to celebrate the work of God securely and our mind may not be stirred against your fraternity because of your negligence.

C. VIII. With the bishop's permission an abbot can leave his place.

Likewise from the Council of Mainz. An abbot may leave his place for the sake of humility and with the bishop's permission; nevertheless, let the brothers elect an abbot for themselves from among their own if they have one, but if not, from outsiders. PART III. GRATIAN. Behold, in the Council of Toledo it is said that bishops ought to institute abbots and other offices. Blessed Gregory and Pelagius forbid this, saying that an abbot is to be elected and ordained by the brothers of his congregation. How, therefore, will so great a diversity be recalled to concord? But it is to be known that certain monks are of untamed neck and unbridled pride; when their abbots wish to compel them to religion, they conspire to depose them and strive to place over themselves another agreeable to their own morals. Such were those who are read to have conspired to kill blessed Benedict. For persons of this kind it was established that abbots and other offices are to be instituted by bishops. Hence Pope Pelagius writes to Opilio the Defender, saying:

C. IX. Monks are not permitted to expel abbots at their own judgment or to ordain others.

Henceforth we leave to monks no power and no license to expel abbots at their own judgment or to ordain others over themselves—because no authority will remain to the abbot if he begins to be subject to the power of the monks—so that henceforth the solicitude of the abbot, to whom it is fitting that all power pertain, ought faithfully and diligently to fulfill all things which pertain either to reverence for divine worship or to the interests of that monastery. PART IV. GRATIAN. Hence it was also established that the clerics of individual monasteries are to be under the power of bishops and that no one is permitted to build monasteries without their knowledge. Hence it is read in the Council of Chalcedon, [c. 4]:

C. X. Let no one build monasteries without the bishop's knowledge.

Certain persons wearing the habit of monks indiscriminately commend both monasteries and themselves throughout the cities by their own presumption. Therefore it pleased us that no one is to

build or construct monasteries or a house of prayer without the knowledge of the bishop of that city. Likewise, [c. 8]: § 1. Let clerics appointed in poorhouses, monasteries, or shrines of martyrs be under the power of the bishop who is in that city, according to the tradition of the holy Fathers, and let them not presumptuously withdraw from their bishop. § 2. But those who shall have dared to annul an institution of this kind in any manner, or who shall be unwilling to be subject to their own bishop, if indeed they are clerics, let them be subject to the condemnations of the canons according to the ordering of their persons; but if they are laymen or monks, let them be deprived of communion. Likewise: § 3. Let clerics who preside over the administration of the poor, monasteries, or shrines of martyrs remain under the power of the bishops of the individual cities according to the tradition of the canons, and let them not through their own rashness decline the governance of their bishop. But those who shall have dared to subvert an arrangement of this kind in any manner and shall not have obeyed their bishop, if indeed they are clerics, let them be subject to canonical condemnation; but if they are monks or laymen, let them be suspended from communion.

C. XI. One who is to be placed over religious women is to be examined by the bishop.

Likewise from the Fourth Council of Carthage, [c. 97]. One who is to be placed over religious women is to be approved by the bishop. GRATIAN. Likewise no one is permitted to begin or found a monastery without the bishop's permission. Hence it is read in the Council of Agde, [c. 27]:

C. XII. Let no one presume to begin a monastery without the bishop's permission.

Concerning monks, let no one presume to begin or found a new monastery unless the bishop either permits or approves it.

C. XIII. Concerning the same matter.

Likewise from the same, [c. 58]. We forbid new cells or small congregations of monks to be instituted without the bishop's knowledge.

C. XIV. Let no monk presume to construct a cell without the will of the bishop or abbot.

Likewise from the Council of Orléans, [I, c. 24]. Let no monk, after abandoning the congregation of the monastery, presume under the impulse of ambition and vanity to construct a cell without the bishop's permission or the will of his abbot. PART V. GRATIAN. Likewise there are others who, for the pursuit of various cases, admit persons of any kind who loosen their strictness and disturb the quiet of religion. Concerning them it is read in the Council of Tribur:

C. XV. Let an abbot who has not been circumspect in governance be barred from his honor by his own bishop and neighboring abbots.

If any abbot shall not have been circumspect in governance, humble, chaste, merciful, discreet, and sober, and shall not have shown the divine precepts by words and examples, let him be barred from his honor by the bishop in whose territory he resides, by the neighboring abbots, and by others fearing God, even if the whole congregation, consenting to his vices, wishes to have him as abbot.

C. XVI. Let abbots remain under the power of bishops.

Likewise from the Council of Orléans, [I, c. 21]. PART IV. Let abbots remain under the power of bishops because of the humility of religion, and if they shall do anything outside the rule, let them be corrected by the bishops; having received a summons, let them meet once a year at the place which the bishop shall have chosen. § 1. But let monks be subject to their abbots with every obedience and devotion. But if anyone shall have proved disobedient through contumacy and presumed to wander through any places or to have anything of his own, let everything he shall have acquired be taken away by the abbots, to profit the monastery according to the rule. But those who had wandered are, wherever they shall have been found, to be recalled under custody as fugitives with the bishop's assistance. § 1. And let that abbot know that he will be held guilty who shall not have disciplined persons of this kind according to the rule, or who shall have received another's monk.

[C. XVII.]

Likewise from the Council of Arles. Let monasteries and the discipline of monks pertain to the bishop in whose territory they are situated.

C. XVIII. Let no one furnish episcopal ministries to abbots who are unwilling to be subject to any bishop.

Likewise Pope Paschal II. Let absolutely no bishop furnish any episcopal ministries to abbots who are under neither a bishop, metropolitan, primate, nor patriarch. For since they profess that they are subject to no bishop at all, it follows that no bishop is to bestow upon them, as upon outsiders, the things that are his. GRATIAN. For persons of this kind it was therefore established that the affairs and interests of monasteries are to be ordered by bishops. Hence Gregory writes to Vitalis, Defender of Sardinia, [book VII, letter 65]:

C. XIX. The interests of a monastery ought to be ordered by its own bishop.

We have learned that each person at his own pleasure and for the pursuit of various cases disturbs monasteries of servants of God or of women. We receive this with no pleasure at all, and concerning it admonish your Experience that, having received our authority, you are by no means to permit this to be usurped again, but let it be the care of the bishop of that place, under whose governance they live, to order their affairs and interests. For it is exceedingly unseemly that, with him omitted, anyone else should involve himself in their affairs; rather, he ought to order their lives by fitting governance according to the rule who is compelled to render an account for their souls committed to him. PART VII. GRATIAN. For this reason blessed Gregory also forbids women indiscriminately to approach a monastery and to become co-mothers of monks, writing to Abbot Valentinus, [book III, letter 40]:

C. XX. Monks are permitted neither to make women their co-mothers nor to approach women.

It has reached us that women indiscriminately ascend into your monastery and—what is graver—that your monks make them their co-mothers and from this have incautious association with them. Therefore, lest on this occasion the enemy of the human race deceive them by his cunning—which may it not be—we admonish you by the tenor of this command that henceforth you neither permit women to ascend into your monastery on any occasion nor permit your monks to make them their

co-mothers. For if this shall again reach our ears in any manner, know that you will be subjected to such exceedingly severe punishment that others will without doubt be corrected by the nature of your amendment. PART VIII. GRATIAN. Not only is incautious familiarity with other women forbidden them, but they are even prohibited from dwelling with holy nuns. Hence it is read in the Seventh Synod, [c. 20]:

C. XXI. Monks are not permitted to live with nuns.

We decree that a double monastery is by no means to be made, because this becomes a scandal and stumbling block to many. But if any persons with their relatives wish to renounce the world and pursue the monastic life, the men ought to approach a monastery of men and the women to enter a monastery of women. For in this God is pleased. § 1. But those which until now have been double are to be ordered thus according to the rule and command of the holy Father Basil. Let monks and nuns not dwell in one monastery. For adultery intrudes upon cohabitation if a monk has access to a nun, or a nun to a monk, in secret for conversation. § 2. Let no monk sleep in a women's monastery or eat alone with a nun; and when the necessities of life are carried from the men's part to those under the rule, let the abbess of the women's monastery receive them outside the gate with a certain elderly nun. § 3. Moreover, if it shall happen that a monk wishes to see some female relative of his, let him converse with her in the abbess's presence in few and concise words and depart from her shortly.

C. XXII. Let monks and nuns nowhere dwell together.

Likewise in Gregory's *Register*. We permit monks and nuns nowhere to dwell in one monastery, not even in those which are called double. And if there is any such monastery, let the religious bishop take care that the women remain in their own place, but compel the monks to build another monastery. But if there are many such monasteries, let the nuns be separated into some monasteries and the monks into others; and let the property which they hold in common be distributed to them according to the rights properly belonging to them.

C. XXIII. Let monasteries of girls be situated farther away from a monastery of monks.

Likewise from the Council of Agde, [c. 28]. Let monasteries of girls be situated farther away from a monastery of monks, either because of the snares of the devil or because of the disparagement of men.

C. XXIV. Let monasteries of girls be governed by the protection and administration of monks.

Likewise from the Second Council of Seville, [c. 11]. At the tenth proceeding we decreed by common consent that monasteries of virgins in the province of Baetica are to be governed by the administration and protection of monks. For we prove measures salutary for virgins dedicated to Christ when we choose spiritual fathers for them, by whose governance they can not only be protected but also be edified by their teaching—yet with this caution observed concerning the monks: that, removed from familiarity with them, they are not to have familiar permission to approach even as far as the vestibule. Nor will it be lawful for the abbot or the man placed over them to speak outside the presence of the woman who presides to Christ's virgins about anything that pertains to their instruction; nor ought they frequently to speak with the woman who presides alone, but under

the witness of two or three sisters, in such a way that access is rare and conversation altogether brief. PART IX. GRATIAN. Nuns are also forbidden to have private dwellings. Hence Innocent II, [in the council held at Rome, cc. 26 and 27]:

C. XXV. Concerning the same matter.

We decree that the pernicious and detestable custom of certain women is to be abolished—women who, although they live neither according to the Rule of blessed Benedict nor that of Basil or Augustine, nevertheless desire commonly to be regarded as nuns. For although those living in monasteries according to the rule ought to be together in common in the church, refectory, and dormitory, they build private retreats and private dwellings for themselves, in which under the veil of hospitality they are in no way ashamed indiscriminately to receive guests who are less religious, contrary to sacred and good morals. Therefore, because everyone who does evil hates the light, and through this they, hidden within the tabernacle of the righteous, suppose that they can escape the eyes of the Judge who beholds all things, we forbid by every means and prohibit under penalty of anathema that this so dishonorable and detestable crime be done further. § 1. In a similar manner we forbid nuns to assemble together with canons and monks in one choir in the church for psalmody. PART X. GRATIAN. Likewise there are others whom bishops burden, while neglecting the salvation of their souls and desiring on any occasions to alienate the goods of monasteries. Such were certain clerics of the church of Ravenna who, with a pretense of religion, desired to be placed over monasteries without passing to the monastic habit or renouncing ecclesiastical service. Concerning them Gregory writes to John, Bishop of Ravenna, [book IV, letter 1]:

C. XXVI. Monasteries ought not to become dwellings of clerics or laymen.

It has reached me that in the churches of your fraternity certain places long ago consecrated as monasteries have now become dwellings of clerics or even laymen; and while those who are in the churches pretend that they live religiously, they seek to be placed over monasteries, and by their life the monasteries are destroyed. For no one can in ecclesiastical offices, etc. And below: § 1. Therefore let your fraternity hasten to correct this wherever it has been done, because I shall by no means suffer sacred places to be destroyed for the ambition of clerics.

C. XXVII. Let those constituted in sacred order have no power in monasteries.

The same to Marianus, Bishop of Ravenna, [book VI, letter 40]. Some time ago it had reached us through the report of many that monasteries situated in the regions of Ravenna were altogether burdened by the dominion of your clerics, such that on the occasion of governance they possess them —which is grievous to say—as though in ownership. Feeling no small grief for them, we sent letters to your predecessor that he ought to correct this. But because he was rather swiftly overtaken by the end of life, we recall that we wrote these same things to your fraternity so that this burden might not remain upon the monasteries. And because, as we have learned, correction of this matter has been neglected until now, upon hearing this we have again provided that writings be directed to you. Therefore we exhort you, with every delay and every excuse removed, to strive so to relieve those monasteries of a burden of this kind that henceforth no clerics, or those constituted in sacred order, may have license to approach them for any other reason—except only for the sake of exhortation—or unless perhaps they shall have been invited to perform the sacred mysteries of Masses. But lest

because of the promotion of any monk or abbot, etc. And below: § 1. Let him have no further power there, lest monasteries under the veil of this occasion be compelled to sustain the burdens which we forbid. Therefore let your Holiness, now admonished a second time, not delay to correct all these things with vigilant care, lest, if after this we perceive that you are negligent—which we do not believe—we be compelled to provide for the quiet of the monasteries in another way. For let it be known to you that we shall not permit a congregation of God's servants to be subject to so great a necessity.

C. XXVIII. A bishop may approach a monastery for the sake of visitation and exhortation.

The same, [to the same, book VII, indiction 1, letter 18]. PART XI. Let the bishop of the city approach the monastery for the sake of visitation and exhortation whenever it pleases him; but let the bishop fulfill the office of charity there in such a way that the monastery incurs no burden.

C. XXIX. Let bishops visit monasteries frequently and correct the things which are to be corrected.

Likewise from the Council of Orléans. Let bishops visit monasteries of monks not once but more frequently in the year, and if anything shall need correction, let it be corrected. PART XII. GRATIAN. For persons of the kind who, having no care for souls, nevertheless desired to convert the goods of monasteries to their own uses, it was established that monasteries together with their property are to be entirely free from the power and dominion of bishops. But the statement that monasteries are subject to no canonical dues is not to be understood in such a way that nothing ought to be offered to the bishop in the name of a eulogia, either on the day of dedication or on the feast of the saints in whose name that monastery was dedicated. Hence Pope Pelagius says:

C. XXX. A bishop ought not to exact anything from a monastery beyond the conditions which he established at the time of dedication.

Our brother and fellow bishop Eleutherius complains that his mother constructed and dedicated an oratory on an estate called Castellum and established monks in that place, one of whom is a priest. He asserts that at the time of dedication it was agreed between Bishop Cardelus—to whose diocese it belongs—and his mother that whatever should enter through the offerings of the faithful on the day of the dedication or of the feast of the martyrs whose relics are in that monastery, the monastery itself should have half and the other half should be offered to the bishop. Contrary to that agreement, the priest Marius—whether the bishop knows it or does not know it—is said to have inflicted violence upon those monks or upon the priest who is one of them and frequently to cause disturbances, such that he nearly struck down the aforesaid priest and in no way permits him to celebrate Masses, saying that he ought to establish some payment as though in the name of a pension. Therefore we command you diligently to examine all these things; and if it shall be established before you by evident reasoning that at the time when that monastery was dedicated the conditions set forth above were agreed upon, we command by our authority that they be observed and that nothing further be exacted from there by anyone. But if no such thing shall be established, with you mediating, we will that it be defined between the monks themselves and the priest what ought to be offered to the bishop in the name of a eulogia—yet with this preserved: that the priest

Gaudentius, who is also a monk, ought no longer to be prohibited by anyone from celebrating Masses in his monastery as he was accustomed.

C. XXXI. Let monasteries furnish customary services to bishops.

Likewise Urban II. We too concede the service which monasteries or their churches have rendered from the time of Gregory VII until the present time. GRATIAN. Therefore the canonical dues to which monasteries are not subject are understood to be synodal exactions. For an abbot is not to be compelled—as is established in the Council of Tours—to go to a synod unless some reasonable cause exists. There are also certain duties of servitude, such as forced labor, frequent receptions, annual exactions, and fines upon sinners, from all of which monasteries are free.

Causa XIX

GRATIAN. Two clerics wish to pass to a monastery; each sought permission from his bishop. One, having left his own church against the bishop's will, betook himself there; the other, having left a regular canonry, betook himself to a monastery. (Question I.) It is now asked whether a bishop ought to permit a cleric to enter a monastery after leaving his own church. (Question II.) Second, it is asked whether, if the bishop is unwilling to give permission, the cleric can go to a monastery against his will. (Question III.) Third, if it happened that they were regular canons, whether entrance into a monastery was to be conceded to them.

Question I

GRATIAN. That a bishop ought to give clerics permission to go to a monastery is commanded in the [Fourth] Council of Toledo, in which it is read to have been established thus, [c. 49]:

C. I. Entrance ought not to be denied to clerics who seek the purpose of monks.

Clerics who seek the purpose of monks—because they desire to follow a better life—ought to have free entrance into monasteries granted to them by the bishop.

Question II

GRATIAN. But Bishop Leo testifies that no one is to receive another bishop's cleric against that bishop's will, writing to Rusticus, Bishop of Narbonne:

C. I. Let no one receive another's cleric against his bishop's will.

Let no one receive another's cleric against his bishop's will. GRATIAN. But it is to be understood: unless he wishes to pass to the purpose of a better life. For then he is free to enter a monastery even when the bishop contradicts him. Hence Pope Urban II in the chapter of Saint-Ruf:

C. II. One who seeks the purpose of monks is to be received even against the bishop's will.

There are, he says, two laws: one public and the other private. The public law is that which has been confirmed in writings by the holy Fathers, as is the law of the canons, which indeed was handed

down because of transgressions. For example: it was decreed in the canons that a cleric ought not to pass from his own bishopric to another without commendatory letters from his bishop. This was established because of criminals, so that infamous persons might not be received by any bishop. For they were accustomed to celebrate their offices in another bishopric when they could not do so in their own, which has rightly been condemned by precepts and writings. § 1. But the private law is that which is written in the heart by the inspiration of the Holy Spirit, as the Apostle says concerning certain persons: "Who have the law of God written in their hearts," and elsewhere: "When the gentiles do not have the law, if they naturally do the things that are of the law, they are a law to themselves." If any one of these retains a people in his church under a bishop and lives in a secular manner, but, breathed upon by the Holy Spirit, wishes to save himself in some monastery or regular canonry, because he is led by the private law no reason requires that he be constrained by the public law. For the private law is worthier than the public. Indeed, the Spirit of God is law, and those who are acted upon by the Spirit of God are led by the law of God; and who is there who can worthily resist the Holy Spirit? Therefore, whoever is led by this Spirit, even if his bishop contradicts him, may go free by our authority. For the law is not imposed upon the just, but where the Spirit of God is, there is liberty, and if you are led by the Spirit of God, you are not under the law.

Question III

GRATIAN. PART I. But regular canons are forbidden by many authorities to pass to a monastery. Hence it is read in the Council of Autun assembled under Gregory VII:

C. I. Regular canons ought not to become monks.

Let no abbot or monk dare to recall regular canons from the purpose of canonical profession and, drawing them to the monastic habit, receive them so that they become monks, so long as they shall have been able to find a church of their order in which, by living canonically, they can serve God and save their souls. But if they shall attempt to do this with rash daring, let them be bound by the bond of anathema.

C. II. Concerning the same matter.

Likewise Pope Urban II. We command and universally forbid any canon who has professed according to the rule to become a monk unless—which may it not be—he shall have fallen publicly. But if, presuming to act contrary to our decree, he shall attempt to do so, we command that he return to the canonical order, thereafter wear a memorial cowl, and remain last in the choir. GRATIAN. But it is to be understood: unless he assumes the purpose of religion with his father's permission. Hence Urban II writes to the Abbot of Saint-Ruf:

C. III. With their father's concession, regular canons can become monks.

We establish that no one of canonical profession, after in God's place he has placed a man over his own head, is to dare, at the prompting of any levity or under the pretext of a stricter religion, to depart from that cloister without the permission of his father and the whole congregation. But let no abbot, bishop, or monk receive one departing without a common guarantee of letters. PART II. GRATIAN. It is asked whether monasteries which have once been dedicated can pass into dwellings of clerics or secular persons. This is forbidden in every way in the Council of Chalcedon, c. 24:

C. IV. Let places once dedicated as monasteries always remain monasteries.

Let places once dedicated as monasteries by the counsel of bishops remain monasteries perpetually, and the property pertaining to them ought to be reserved for the monasteries; nor can they afterward become secular dwellings. But those who shall have permitted this to be done are to be subject to those condemnations which have been established by the canons.

C. V. Let a cleric who has made sacred places into common lodging houses be deposed, and a layman be excommunicated.

Likewise in the Seventh Synod, c. 13. Because certain venerable houses, both episcopal residences and monasteries, are surreptitiously taken away by certain men and have been made common lodging houses, if those who retain them are willing to restore them so that they may be restored according to their ancient state, it is well and excellent; otherwise, if they are from the sacred catalogue, we command them to be deposed, but if they are monks or laymen, to be excommunicated. For it is evident that they have been condemned by the Father, the Son, and the Holy Spirit and are assigned to where their worm will not die and the fire will not be extinguished, because they oppose God, who says: "Do not make my Father's house a house of trade." PART III. GRATIAN. It is asked concerning those who come to conversion at what time they ought to be tonsured. Concerning them Pope Gregory writes thus to Fortunatus, Bishop of Naples, [book VIII, letter 23]:

C. VI. No one ought to be tonsured before he has completed two years in conversion.

Let your fraternity more strictly forbid all monasteries to dare in any way to tonsure those whom they shall have received for conversion before they have completed two years in this way of life. But during this period let their life and morals be carefully proved, lest any of them either not be content with what he desired or not hold as ratified what he chose. For since it is grave to associate untested men with services to men, who could say how much graver it is to apply the wicked to God's service? But if a soldier wishes to be converted, before he is reported to us let no one presume for any reason to receive him without our consent. PART IV. GRATIAN. It is asked whether license to make a testament is left any longer to those who have entered a monastery. Gregory forbids this, writing thus to Januarius, Bishop of Cagliari, [book VII, indiction 2, letter 7]:

C. VII. After entrance into a monastery, no one is left license to make a testament.

Because those entering a monastery for the sake of conversion are thereafter to have no license to make a testament, but their property is to belong to that monastery, this has been decreed by an express definition of law.

C. VIII. After entrance into a monastery, all things are to be conferred upon that monastery.

Likewise Gregory to Cyprian the Deacon, [book III, letter 6]. It has been reported to us that a woman named Petronilla, born in the province of Lucania, was converted through the exhortation of Bishop Agnellus and specially conferred by title of gift upon that same monastery which she entered all her property which she could possess, although it could have belonged to her by right. GRATIAN. To the

contrary Paul, the first hermit, left his colobium in his testament to Athanasius, Bishop of Alexandria, but his tunic to blessed Antony. But it is one thing concerning those who, after entering a monastery, handed over themselves and their property; another concerning those who, leading a solitary life, handed themselves over to no church. The former cannot give to anyone the things once handed over; the latter can freely make a testament concerning things offered to no one.

[C. IX.] Likewise a new constitution.

"If any woman or man shall have chosen the monastic life and entered a monastery, with no children existing, we command that his or her property belong to the monastery which they enter. § 1. But if a person who has children enters a monastery before disposing of his or her property among them, let it afterward be lawful to divide it among them, with the lawful portion of none diminished, and what shall not have been given to them will belong to the monastery. § 2. But if the person shall wish to divide the whole substance among the children, let that person, counted among the children, retain a share for himself or herself which ought to belong to the monastery. § 3. But if the person shall die after entry before dividing it among them, let the children receive their lawful portion, with the remaining substance belonging to the monastery." Constitution 5 in collection 1. § 4. "But now, since by becoming a monk he is regarded by that very act as having offered all his property, if he did not make a testament beforehand, the law thereafter disposes of it when his judgment has ceased, so that if he has children upon whom by any title of gift he conferred either nothing or less than their lawful portion, so much is to be deducted from the substance destined for the monastery that nothing unjust occurs concerning the children."

[C. X.]

Likewise from Novel [CXXIII]. "It is not lawful for parents to exclude children who have become monks from their inheritance, or for children to exclude their parents, although while they were laypersons they fell into a cause of ingratitude." Likewise: § 1. "It is not lawful for parents to drag from a monastery their children who have passed to the solitary life."

Causa XX

GRATIAN. Two persons in the years of childhood were handed over to a monastery by their parents; one unwillingly, the other voluntarily, put on the cowl. When they reached the years of puberty, the unwilling one returned to secular military service, while the voluntary one sought a stricter monastery. (Question I.) Now it is first asked whether those handed over in the years of childhood are compelled to maintain the purpose of religion. (Question II.) Second, if anyone in childhood receives the tonsure or the garment of religion apart from the will of the parents, whether it can be taken from him or not. (Question III.) Third, whether one who put on the cowl apart from his own will is compelled to retain it or not. (Question IV.) Fourth, whether anyone is permitted to pass from one monastery to another that is stricter.

Question I

GRATIAN. That those handed over within the years of childhood, when they shall have become adults, have free choice to remain or depart is proved by the authority of the Ninth Synod, in which it

was established thus:

C. I. At what time a profession of virginity begins to be firm.

A profession of virginity will then be firm when the age has begun to be adult and perfect, which is customarily judged suitable for marriage. GRATIAN. If a profession of virginity begins to be firm when the age has begun to be adult, then a profession of religion ought at length to be firm when adult age has been reached. But here the discussion concerns that profession which is offered to God by one's own judgment during the years of childhood and which the consent of the parents does not confirm. But a profession offered to God by the parents ought to be preserved inviolate. Hence Gregory writes to Augustine, Bishop of the English:

C. II. One whom a father or mother caused to be placed under the rule within the years of infancy is not permitted to leave the monastery.

You further added that if a father or mother handed over a son or daughter within the enclosure of a monastery under regular discipline during the years of infancy, whether, after they have grown to the years of puberty, it is lawful for them to depart and be joined in marriage. We avoid this entirely, because it is impious that the reins of pleasure be relaxed for children offered to God by their parents.

C. III. Either one's own profession or a father's devotion makes a monk.

Likewise from the Fourth Council of Toledo, [c. 48]. Either a father's devotion or one's own profession makes a monk. Whichever of these it shall be, it will hold the person bound. Therefore we close off from them access to returning to the world and forbid every return to the secular life.

C. IV. Let those who were handed over by their parents remain perpetually in a monastery.

Likewise Isidore. Whoever shall have been assigned to a monastery by his own parents is to know that he will remain there perpetually. For in piety Anna offered to God her boy Samuel, born and weaned; he both remained in the ministry of the temple to which he had been assigned by his mother and served where he was placed.

[PALEA.

C. V. Concerning the same matter.

Likewise from Gregory's *Register*, book I, letter 48, to Anthemius. But because the congregation of monks on islands is harsh, we forbid even boys to be received in those monasteries before the age of eighteen years; or if any are there now, let your Providence remove them and send them to the city of Rome. We will that you observe this in every respect both on Palmaria and on the other islands.]

C. VI. One who was handed over to a monastery by his ancestors cannot depart from it.

Likewise from the Council of Tribur. One whom his ancestors handed over to a monastery and who began to sing and read in the church will be able neither to take a wife nor to leave the monastery; but if he shall have departed, let him be brought back; if he shall have let his tonsure grow out, let him be tonsured again; if he shall have taken a wife, let him be compelled to dismiss her.

[PALEA.

C. VII. Likewise from Theodore's Penitential.

An infant can be given in a monastery for an infant, although the other was vowed. Nevertheless, it is better to discharge the vow. Similarly, livestock of equal price—if it is necessary—is to be redeemed.]

PART II. GRATIAN. From these authorities it is gathered that a father's profession holds boys bound, and that they will not be permitted to depart from the purpose which they undertook in their childhood years through a father's devotion. But that statement of Pope Leo is objected, [letter XC to Bishop Rusticus, cc. 13 and 14]:

C. VIII. Girls who undertook the purpose of virginity by their spontaneous will are not permitted to choose marriage.

Girls who undertook the purpose and habit of virginity not when compelled by their parents' command but by spontaneous judgment, if they afterward choose marriage, transgress, even if consecration has not yet been added to them—a gift of which they would surely not be deprived if they remained in their purpose. But it cannot be doubted that a great crime is committed where both the purpose is abandoned and consecration is violated. For if human compacts cannot be trampled with impunity, what will remain for those who have corrupted the covenants of a divine sacrament?

GRATIAN. Therefore, since at the beginning of this chapter it is said, "Girls who were not compelled by the command of their parents," it is given to be understood that if they assumed the habit of virginity when compelled, they can abandon it without transgression. But a girl of marriageable age is understood here, whose judgment, as is shown in what follows, is free after the twelfth year; nor in the choice of a purpose is she compelled to follow her parents' command. Thus also is to be understood what was established in the Synod held by Pope Eugene, [II, c. 32]:

C. IX. Let those confined in monasteries apart from their own will not be held there.

Just as those who chose monasteries are not permitted to depart from monasteries, so those who were admitted unwillingly without cause of a just offense are to be held only if they wish, because they observe what they do not seek. And therefore such persons are to be regarded as committing sins rather than lamenting them, as is contained most clearly in the decree of the most holy Pope Leo.

[PALEA.

C. X. Hence Pope Marcellus.

But we judge that this is to be established: if sons shall have been offered to a monastery at a younger age and received the sacred tonsure or veils, we have indeed deemed it worthy that, after being admonished by the prelates in their fifteenth year, they be asked whether they desire to remain in that habit or not. But if they shall have professed that they wish to remain, they can by no means thereafter embrace a place for repentance. But if they wish to return to secular dress, permission to return is by no means to be denied, because it is sufficiently useless for compelled services to be furnished to the Lord.]

PART III. GRATIAN. But it is not lawful for the veil to be imposed upon virgins except on certain days. Hence Pope Gelasius to all the Bishops [throughout Lucania, cc. 14 and 15]:

C. XI. Let the veil be imposed upon virgins only on certain days.

Let the sacred veil by no means be imposed upon professed virgins except either on the day of Epiphany, during the Easter octave, or on the feasts of the Apostles; unless perhaps, as was said concerning baptism, they have been overtaken by grave illness, in which case it is not to be denied to those imploring it, lest they depart from the world without this gift. § 1. But let no pontiff attempt to veil widows. PART IV. GRATIAN. The time of their consecration is likewise to be observed. Hence Gregory in the *Register*, [book III, letter 11]:

C. XII. Let virgins not be consecrated before the sixtieth year of their age.

We most vehemently forbid young women to be made abbesses. Therefore let your fraternity permit no virgin to be veiled unless she is sixty years old and her life and morals require this.

[C. XIII.]

Likewise from the Third Council of Carthage. Let nuns not be veiled before the fortieth year.

C. XIV. Let virgins not be consecrated before the twenty-fifth year.

Likewise from the Third African Council, [c. 4]. It pleased us that neither deacons be ordained nor virgins consecrated before twenty-five years of age, and that readers not salute the people.

[PALEA.

C. XV. Likewise Pope Pius.

Let virgins not be veiled before twenty-five years, unless perhaps because of the necessity of virgin chastity being endangered; and they are not to be consecrated except on Epiphany, Holy Saturday, and the feasts of the Apostles, unless the cause of death is urgent.] PART V. GRATIAN. But although widows are forbidden to be veiled, nevertheless a profession of widowhood is to be made by them in writing. A garment fitting their profession is also to be handed to them, which they are to use everywhere.

Hence in the Tenth Council of Toledo, [c. 4]:

C. XVI. Let those who purpose to preserve chastity make a profession of widowhood and assume the habit of religion.

A widow who wishes to obtain the purpose of holy religion is to make a profession in writing to the priest or minister to whom she herself shall have come, or who happens to come to her, marked by her either with a sign or a signature, containing that she both wills the purpose of religion and will preserve it perpetually inviolate. Then, having received from the priest or minister a garment suitable for the profession of religion, whether resting upon a bed or remaining in any place, let her use it constantly; and let this garment not be notable for diverse color or diverse part, but religious and not suspect.

Question II

GRATIAN. PART I. Concerning those who have received the tonsure or religious garment apart from their parents' will, it is defined thus in the Tenth Council of Toledo, [c. 6]:

C. I. A tonsure or religious garment received at a younger age can be rendered void by the parents.

If at any younger age either one parent or both shall perhaps have given their children of either sex the tonsure of religion or the garment owed to religion; or if, when the children assumed it while the parents were unwilling or unaware, the parents did not repudiate it immediately upon seeing it, but either before themselves or before the bishop and openly in an assembly permitted those children to have such things, the children themselves will thereafter never be permitted to return to secular dress; but, when they are convicted of having at any time had the tonsure or religious garment, let them immediately be recalled to the worship and habit of religion and compelled to serve under the strenuous strictness of this observance. § 1. Permission for parents to hand their children over to religion can indeed extend no further than the tenth year of their age; but afterward, whether with the will of the parents or if it is the individual vow of their own devotion, it will be lawful for the children to assume the worship of religion. § 2. But whoever shall be discovered to have reached transgression either by effacing the tonsure or by assuming secular dress is both to receive the censure of excommunication and always to adhere to religion.

C. II. Until the age of twelve, let a girl be subject to the judgment of her father's will.

Likewise from the Council of Tribur, [c. 24]. If before twelve years of age a girl of her own accord shall have assumed the sacred veil for herself, her parents or guardians can immediately render that deed void if they wish. But if by dissembling for a year and a day they shall have consented, neither they nor she will afterward be able to change it. § 1. But if at a more mature age a young woman or young man shall have chosen to serve God, the parents have no power to prohibit it. PART II. GRATIAN. But no nun is permitted to impose the veil upon another. Hence Pope Eutychian says:

[C. III.]

We establish that if an abbess or any nun after this definition shall have burst forth into such audacity that she presumes to veil either a widow or a virgin girl, let her be subjected to canonical judgment until satisfaction. PART III. GRATIAN. By this authority it is taught that anyone in the years of childhood is bound by the aforesaid profession and that he is held by the purpose undertaken apart from his own will, unless the parents immediately repudiated the tonsure or religious garment upon seeing it. But when little children are offered, they are to be received only under the testimony of many. Hence it is read in the Ninth Synod:

C. IV. Let infants offered by their parents be received under the testimony of many.

Infants offered with the will and consent of their parents—indeed, by the parents themselves—ought to be received under the testimony of many, so that every occasion for slander by the worst of men may be excluded.

Question III

GRATIAN. PART I. But that one who unwillingly undertook the purpose of religion is not to be compelled to observe a purpose undertaken unwillingly is testified by Pope Leo, [letter XC, otherwise XCII, to Bishop Rusticus, c. 12], saying:

C. I. The purpose of a monk undertaken voluntarily cannot be abandoned.

The purpose of a monk undertaken by one's own judgment and will cannot be abandoned without sin. For what anyone vows to God he also ought to render. Hence one who, after abandoning the profession of the solitary life, has fallen away to military service or marriage is to be purified by the satisfaction of public penance; for although military service may be innocent and marriage honorable, nevertheless to have abandoned the choice of better things is a transgression.

C. II. One who wishes to abandon a religious habit undertaken voluntarily is to be compelled to return to it.

Likewise from the Seventh Council of Toledo, [c. 6]. The course toward pleasure is ready, and nature is an imitator of vices. Therefore, whichever man or woman shall once have voluntarily put on the religious habit—or if a man shall have been dedicated to a church or a woman assigned to a monastery of girls—let the transgressor of either sex be compelled to return unwillingly, so that the man is tonsured and the girl returns to the monastery. But if through any patronage the deserters wish to remain such, let them by priestly sentence be held banished from the company of Christians, so that there may be no place of communion for them. § 1. Let widows also who desert their profession or habit be condemned by the preceding sentence, just as the universal synod established long ago.

C. III. Those once enrolled in the clergy or assigned to monasteries are not to return to military service.

Likewise from the Council of Chalcedon, [c. 7]. We have decreed that those who have once been enrolled in the clergy or assigned to a monastery are to come neither to military service nor to secular honors. But those who shall have dared to do this and shall have preferred not to repent of the matter by returning to that very thing which they previously purposed for themselves under the pretext of God ought to be anathematized. PART II. GRATIAN. When it is said, "the purpose of a monk undertaken by his own judgment and will," it is understood that if it was not undertaken by his own will, he is not compelled to observe it. Hence Pope Nicholas writes to all the Bishops in the Kingdom of Louis:

C. IV. Let no one be subjected unwillingly to monastic disciplines.

The present cleric, named Lambert, together with his father named Atto, formerly indeed a count but now a cleric, hastening to the thresholds of the Apostles, approached our presence, asserting how that father of his, while still in the lay order, had built two monasteries on his own estates, having the will that after his death his present son Lambert should succeed him in his place. When Lambert was still at a tender age between his eighth and tenth year, the aforesaid father by his own judgment, without an institution according to the rule and entirely against Lambert's will, put the cowl upon him. Then, after a certain interval of time—as he himself says—Bishop Solomon, together with

certain others, without an offering by the father or a blessing received from an abbot, caused the same Lambert to be clothed in the monastic habit, unwillingly, as they report; and on this occasion he was deprived by his brothers of his paternal and maternal inheritance, and his father wished him, contrary to his entire will, as was said, to remain as though a monk under the rule. Investigating this matter with diligent care, we questioned his father under adjuration whether he spoke the truth. But that cleric Atto answered that he had had and still had such a will: that his son should become a true monk and succeed him in his place. Moreover, under attestation he affirmed by oath that when he first put the cowl upon him, that Lambert always resisted and never consented to become a monk; but at length he was afterward violently clothed in the monastic habit, asserting: "Because he never at any time promised the rule, nor did I, his father, offer him clothed in the altar cloth, nor, after receiving a blessing from any priest or abbot, as custom requires, did he ever promise that as a monk he would be subject to the rule." Concerning all these things the aforesaid cleric Atto testified that if at that time he had understood the monastic rule to be of such harsh observance, he would never have compelled his son Lambert to bear the cowl. § 1. Therefore, prudently recalling the words of the Psalmist by which he declares that he sacrifices himself to God voluntarily and prays that the voluntary offerings of his mouth be pleasing in God's sight, we judged that the present cleric named Lambert, as was said, ought by no means to be made a monk under such violence. For what a person does not choose or desire, he certainly does not love; but what he does not love, he easily despises. Therefore no good is good unless voluntary. For this reason the Lord also commanded that a staff, through which violence might be inflicted upon anyone, is not to be carried on the way. Therefore it is done more prudently if, by preaching contempt for the world and love of God through pious persuasions rather than by inflicting violence, you kindle him toward heavenly love. Hence we have decreed that this letter of our apostolate is to be committed to the charity of you all, admonishing and commanding that—if the truth is as these men say—no bishop, abbot, or assembly of the other monks compel him unwillingly to be subject to monastic rules; nor may his brothers on this occasion have license in any way to deprive him of his paternal or maternal inheritance. But until, pierced by divine inspiration, he subjects himself to the rule by his own will, let it be lawful for him, removed from worldly and lay wanderings or business, to live the canonical life among religious and ecclesiastical men. For we do not think—which may it not be—that religious canons are separated from the fellowship of holy monks, because each person, according to the Apostle, will receive his own reward according to his labor. PART III. GRATIAN. But if any persons, enticed by the promises of a bishop or abbot, shall have received the tonsure or religious garment, let them indeed remain in what they began, but let their property be restored to their heirs. Hence it is read in the Council of Mainz:

C. V. Let the property of those who, deceived by bishops or abbots, laid aside their hair be restored to their heirs.

This sacred assembly indeed established that bishops or abbots who, intent not upon the fruit of souls but upon avarice and shameful gain, tonsured any persons by deceiving them and took away their property by such persuasion are to be subjected to canonical penance as followers of shameful gain. But let those who, having been enticed, laid aside their hair be compelled to persevere in what they began, and let their property be restored to their heirs.

Question IV

GRATIAN. PART I. But that monks are free to pass from one monastery to another that is stricter is held from the Council of Tribur, in which it was established thus:

C. I. Sacred virgins who desire to go to another monastery for the sake of religion are not to be prohibited.

If sacred virgins shall have resolved to proceed to another monastery for the profit of their souls because of a stricter life, and shall have decreed to remain there, the synod concedes it. But if they shall have sought another place in flight from discipline, let them be compelled to return. GRATIAN. But what is established in this chapter concerning sacred virgins is also understood consequently concerning monks, and even concerning any cleric. PART II. § 1. But that statement of Basil is objected:

C. II. The vows of a monk made without the consent of his abbot are void.

A monk is not permitted to vow a vow without the consent of his abbot; but if he shall have vowed it, it will have to be broken. Likewise that statement of the Council of Agde, [c. 27]:

C. III. Let no one receive or ordain a monk without his abbot's permission.

Let no abbot presume to receive or retain a monk migrating to another monastery except by the permission or will of his abbot; but wherever he shall have been found, let him be recalled to his abbot by the authority of the canons. § 1. Likewise: Let clerics without commendatory letters from their bishop have no license to wander. Let the form of the present sentence also be observed concerning monks; if a rebuke of words shall not have corrected them, we establish that they are to be restrained even by beatings. § 2. This also is to be observed concerning monks: that it is not to be lawful for them to depart from the congregation for solitary cells, unless perhaps, after their labors have been proved and completed, or because of the necessity of illness, the abbot's harsher rule is relaxed. This is then to be done in such a way that, while remaining within the enclosures of the same monastery and nevertheless under the abbot's power, they are permitted to have separate cells. Likewise, let an abbot not be permitted to have individual separate cells or several monasteries, except only to place places of refuge within walls because of an enemy incursion.

GRATIAN. But this is to be understood concerning monks living religiously, who are not permitted without the abbot's consent to vow vows of special abstinence or of some strictness exceeding the general custom of their brothers, lest the brothers be scandalized over them. This was also established because of those who, evading discipline according to the rule, assume vows of pilgrimage for themselves, which is permitted neither to a monk nor to any cleric, lest on this occasion he return to secular conduct.

Causa XXI

GRATIAN. The archpriest of a certain church accepted the provostship of another and is unwilling to relinquish the former; he also becomes an agent for secular business. Adorning himself in bright and shining garments, he is corrected by his bishop; after abandoning his office, he has recourse to a secular judge. (Question I.) It is asked whether a cleric can be enrolled in two churches. (Question

II.) Second, if he wishes to relinquish one, whether it is lawful for him to pass to the other. (Question III.) Third, whether clerics are permitted to undertake agencies for secular business. (Question IV.) Fourth, whether it is expedient for them to be adorned with bright and shining garments. (Question V.) Fifth, whether, when corrected by the bishop, they are able to abandon their office and have recourse to a secular judge.

Question I

GRATIAN. The Seventh Synod forbids anyone to be numbered in two churches, saying, [c. 15]:

C. I. A cleric ought not to be enrolled in two churches.

From the present time let no cleric be numbered in two churches. For this is a convenience of commerce and shameful gain and altogether alien to ecclesiastical custom. For we have heard from the Lord's own voice that no one can serve two masters. For either he will hate the one and love the other, or he will sustain the one and despise the other. For each person, according to the apostolic voice, ought to remain in that in which he was called and to be placed in one church. For things done for shameful gain in ecclesiastical affairs remain alien to God; but for the necessity of this life there are diverse pursuits. Therefore, from these let him who wishes acquire the things opportune for the body. For the Apostle says: "For those things which were necessary to me and to those who are with me, these hands ministered." And these things indeed are to be observed in this city. But in villages which are outside, an indulgence is to be granted because of a scarcity of men. GRATIAN. But two churches are understood to mean churches of two cities, in which no one ought to be enrolled.

Hence it was established in the Council of Chalcedon, [c. 10]:

[C. II.]

"Clerics ought not to be enrolled in the churches of two cities." [GRATIAN.] But to the contrary, sometimes the bishop of one city becomes the archbishop of another city and nevertheless does not abandon the former church; rather, the first church is left as though commended to him, while the second is held as though assigned to him by title. Hence Leo IV writes:

C. III. One who is given a title in one church can have another commended to him.

One who retains several churches ought to hold one by title but the other under commendation. Thus also is that statement of the Council of Agde, [c. 57], to be understood:

C. IV. One abbot cannot preside over two monasteries.

We forbid one abbot to preside over two monasteries. GRATIAN. He can also preside over both as though holding them by title, but by special right, not common right. Hence Gregory, [book II, letter 13, to Bishop Agnellus]:

C. V. One bishop is placed over two churches.

The report of the clergy and the people dwelling at Terracina greatly gladdens us because it offers good testimony concerning your fraternity. And because, after their pontiff Peter died, they request

that you be appointed their cardinal bishop, we have foreseen that their desires necessarily are to be fulfilled. § 1. Therefore hasten with the whole intention of your mind so to make a gain of souls for our Lord that a worthy reward may find you before His sight on the day of recompense. But whatever you shall have foreseen is to be ordered and done carefully and canonically concerning the property of the aforesaid church or its patrimony, the ordination or promotion of the clergy, and generally everything pertaining to it, you will have entirely free power, indeed as its own bishop.

[C. VI.]

It is also necessary for your fraternity to know that we have appointed you cardinal bishop of the aforesaid church of Terracina in such a way that you do not cease to be pontiff of the church of Fondi or neglect its care and governance, because we enjoin upon your fraternity the care of the often-mentioned church of Terracina in such a way that we by no means withdraw from you the rights or power of the church of Fondi. GRATIAN. For he cannot preside over both as though holding them by title, but he can preside over one as though commended to him and over the other as though held by title.

Question II

GRATIAN. PART I. But one who wishes to pass to another church after leaving his own is by no means to be received without dismissory letters from his bishop. Hence it is read in the Seventh Synod, [c. 17]:

C. I. Let no cleric be ordained in another's church without dismissory letters.

Because clerics of diverse churches, leaving their own churches in which they were ordained, run to other bishops and, without their own bishop's knowledge, are established in other churches, where it happens that they remain without examination of themselves, we command from now on that absolutely no cleric, in whatever grade he may be, have license to be established in another church without dismissory letters from his bishop. But whoever shall not observe this from now on is to be deposed, to the reproach of the one who ordained him—both he himself and the one who received him without reason.

C. II. A cleric is not permitted to pass to another church if his own has been left destitute of its ministers.

Likewise from the Second Council of Seville, [c. 3]. It pleased us that if any cleric, when his own church has been left destitute of ministers, shall have made passage to another, he is to return to the church which he previously inhabited when compelled by the bishop to whom he fled. But let the one who received him and did not choose immediately, without any effort at objection, to send him back to his own church know that he is deprived of communion until he restores him. Moreover, it is fitting that a deserting cleric, stripped of the belt of his honor and order, be bound for a time to a monastery and then afterward recalled to the ministry of the ecclesiastical order. For license to wander about in such persons will not be able to be abolished unless correction shall have followed in them through the correction of discipline. GRATIAN. But that statement of the Council of Chalcedon is objected, [c. 10]:

C. III. Let one who is transferred from one church to another have nothing in common with the former.

PART II. If anyone has already been transferred from one church to another, let him have nothing in common with the former, whether with the shrines of martyrs established under the church, poorhouses, hospices, or their affairs. But those who shall have dared after the ordinance of this great and universal synod to do the things which are prohibited, the holy synod established are to fall from their own grade. GRATIAN. But it is one thing to be transferred, and another to pass by one's own rashness. The former may be done by apostolic authority, but the latter is forbidden in every way. PART III. § 1. But just as one person ought not to be placed over two churches, so one church cannot be divided among several persons. Hence it is read in the Council of Reims:

C. IV. One church cannot be divided between two priests.

Just as there ought to be one priest in each church, so that church, which is called his bride or wife, cannot be divided among several priests, but will have only one priest who governs her chastely and sincerely. Hence we forbid anyone to presume to divide a church between two or more persons, because the church of Christ ought to be a wife and bride, not a prostitute, as Pope Callixtus testifies. PART IV. GRATIAN. A church also ought not to be committed to hired priests. Hence Innocent II, [in the Roman Synod, c. 10]:

C. V. Let churches not be committed to hired priests.

We also command that churches not be committed to hired priests and that each church which has sufficient resources have its own priest.

Question III

GRATIAN. But that clerics cannot be agents for secular business is proved by the authority of the First Council of Carthage, in which Nicasius, Bishop of Culusium, is read to have said in chapter 6:

[PALEA. C. I.

It came to the holy synod's attention that, among those who are numbered in the clergy, certain persons, for the sake of filthy gain, undertake leases of others' possessions and secular causes; through idleness they separate themselves from sacred ministries, but they run to the houses of secular persons and undertake the management of their property for the sake of avarice. Therefore the holy and great synod decreed that henceforth none of them—that is, neither bishop, cleric, nor monk—is to lease possessions or involve himself in secular administrations, unless perhaps they are drawn by the laws to unavoidable guardianships or administrations of minors, or the bishop of that city has committed to someone the management of ecclesiastical affairs, or of orphans, or of widows who are without defense, or of those persons who especially need ecclesiastical assistance for the fear of God. But if anyone shall have transgressed these statutes, let him be subject to ecclesiastical correction.]

C. II. Let those who are attached to the clergy not become administrators of secular possessions.

I believe that my proposal pleases your holiness and that it displeases you that those who serve God and are attached to the clergy should enter upon legal agencies, administrations, or managements of households. Bishop Gratus said: "The statutes of the Apostles say: 'No one serving as a soldier for God entangles himself in secular affairs.' Therefore let them either be clerics without the agencies of households, or agents without the office of clerics." All said: "Let us observe this."

C. III. On the same.

Likewise from the Fourth Council of Carthage, [c. 15]. It pleased us that bishops, priests, and deacons, or any clerics whatsoever, are not to be lessees or administrators, nor are they to seek a livelihood by any base or dishonorable business, because they ought to have regard to what is written: "No one serving as a soldier for God entangles himself in secular affairs."

C. IV. Let clerics not undertake the administration of secular affairs.

Likewise from the letter of Cyprian to the priests and deacons and the people of Furni, [book I, letter 9]. Cyprian to the priests and deacons and the people abiding at Furni, greetings. Long ago it was established by a council of bishops that no one is to name any of the clerics and ministers of God as guardian or curator in his testament, since each one honored with the divine priesthood and established in the ministry of the clergy ought to serve only the altar and sacrifices and to be free for prayers and supplications. For it is written: "No one serving as a soldier for God entangles himself in secular affairs, so that he may be able to please him to whom he has approved himself." § 1. Our bishops and predecessors, considering this religiously and providing beneficially, decreed that no one departing this life should name a cleric to a guardianship or curatorship; and that if anyone had done this, no offering should be made for him, nor should a sacrifice be celebrated for his falling asleep. For those who wish to call priests and ministers away from the altar do not deserve to be named before the altar of God in the prayer of the priests.

C. V. It is not lawful for clerics to be bound to troubles and secular affairs.

Likewise from the same. Those who are occupied with divine and spiritual affairs ought not to be bound by troubles, secular affairs, and snares, nor to be free for earthly and secular acts.

C. VI. Let clerics not be bound to secular affairs.

Likewise from the same. Those who are promoted in the church of the Lord to ordination among the clergy are in no respect to be called away from divine administration, nor bound to secular troubles and affairs, nor to withdraw from altars and sacrifices, but are to serve heavenly and spiritual affairs by day and night.

C. VII. On the same.

Likewise, as above, Cyprian. Let the decree of the priests, religiously and necessarily made, be observed by us, and at the same time let an example be given to the other brothers, lest anyone call away priests and ministers of God, who are free for his altar and church, to secular troubles. It will be

possible for this to be observed hereafter, so that no one does this further concerning the person of clerics, if what has been done is punished.

Question IV

GRATIAN. That it is not lawful for them to be adorned with splendid and bright garments is commanded in the Seventh Synod, in which it was established thus, [c. 16]:

C. I. Let clerics who live wantonly in ointments and bright and splendid garments be corrected.

All ostentation and bodily adornment is foreign to the consecrated order. Therefore those bishops or clerics who adorn themselves with splendid and bright garments ought to be corrected. But if they persist in this, let them be subjected to a penance. Likewise also those who are anointed with ointments. § 1. But since, when a root of bitterness sprang up, contamination was produced in the catholic church by heretics who calumniated Christians, those who received this not only abominated pictorial representations but also rejected all reverence, offending those who live religiously and piously; and through this there is fulfilled in them what is written: "The worship of God is an abomination to the sinner." Therefore, if any are found deriding those who are clothed in cheap and religious garments, let them be corrected by a penance. § 2. For in ancient times every consecrated man conducted himself in modest and cheap clothing. Indeed, everything that is adopted not for its necessity but for its beauty bears the reproach of pride, as the great Basil says. Nor did anyone put on a garment variegated from silken weavings, nor did they attach ornaments of various colors at the extremity of their garments. For they had heard that "those who are clothed in soft garments are in the houses of kings."

C. II. Let clerics, whether walking on a journey or dwelling elsewhere, use garments suitable to themselves.

Likewise from the Sixth Synod, [c. 27]. Let none of those who are numbered in the clergy have an unbecoming garment, whether dwelling in a city or walking on a journey, but let him use the robes that have been granted to clerics. But if anyone shall have done any such thing, let him be suspended for one week.

C. III. Let clerics use garments suitable to their order, not secular garments.

Likewise Pope Zacharias, [in the Roman Synod, c. 3]. Let bishops, priests, and deacons not use secular garments, but only, as is fitting, a priestly tunic; nor, when they walk in a city, on a road, or in public squares, are they to presume to walk without a covering, except if they are walking on a long journey, because just as a woman praying in churches with her head unveiled dishonors her head, according to the voice of the Apostle, so a priest without a covering dishonors his priesthood. But if he shall rashly presume to act contrary to the statutes, let him be deprived of communion until he hastens to fulfill what has been established.

C. IV. Let priests not appear outside their houses without their proper attire.

Likewise Pope Leo, [IV, in the Roman Synod, c. 12]. It is in no way fitting for priests to appear outside their houses without priestly attire, lest they suffer injuries like one of the secular persons. One found acting contrary to this is either to desist or to be subjected to canonical discipline.

C. V. On the same.

Likewise Innocent II, [in the Lateran Council, c. 4]. We command that bishops as well as clerics strive to please God and men in the state of their mind and the habit of their body, and that they not offend the sight of those beholding them—whose form and example they ought to be—by excess, the cut or color of their garments, or their tonsure, but rather display what befits their holiness. But if, after being admonished by the bishops, they are unwilling to amend, let them lack ecclesiastical benefices.

Question V

GRATIAN. But it is lawful for no one to leave his own bishop or withdraw from his office and flee to a secular judge. Hence it is read in the Council of Agde, [c. 8]:

C. I.

It pleased us that if a cleric, after leaving his office on account of strictness, should perhaps flee to a secular judge, and the one to whom he has recourse should furnish him the assistance of defense, let him be expelled from the communion of the church together with that cleric.

C. II. Let a priest or deacon deposed by his bishop not approach the emperor.

Likewise from the Council of Antioch, [c. 12]. If any priest or deacon has been deposed by his own bishop, or even if any bishop has been deprived of authority by a synod, let him not presume to bring trouble to the imperial ears, but let him turn to a synod of greater bishops, and let him allege in their council the just claims that he thinks he has, and await from them the sentence that shall have been pronounced concerning him. But if, failing through faintheartedness, he is unwilling to do this, but shall have been importunate to the emperor, let such a one have no pardon, no place for any assertion of his, and no hope of receiving his rank in the future.

C. III. Let no one defend a person who is condemned by the judgment of bishops.

Likewise from the Fifth Council of Carthage, [c. 2]. If any cleric of any honor shall have been condemned for any crime by the judgment of bishops, it is not lawful for him to be defended either by the churches over which he presided or by any person; a penalty of loss of money and honor is imposed, from which we command that neither age nor sex is to be excused.

C. IV. Let one who presumes to defend a fugitive from the rule of ecclesiastical discipline be deprived of communion.

Likewise from the Third Council of Arles. If perhaps any of the clerics, evading the rule of ecclesiastical discipline, shall have wandered away, whoever shall have received him and shall not have reconciled him to his own bishop but rather shall have presumed to defend him is to be deprived of the communion of the church.

C. V. Let one who, after being condemned by bishops, approaches the emperor lack hope of reconciliation.

Likewise from the Council of Pope Martin, [c. 35]. If any bishop, priest, or deacon who has been excommunicated complains that he was unjustly condemned in a council, let him return to a council of greater bishops so that, awaiting their inquiry and judgment, he may set forth before them whatever just causes he thinks he has. But if he shall have scorned this and, thrusting himself importunately into the palace, shall have wished to trouble the ears of the princes, he will be able to attain no pardon, nor will he have hope of future reconciliation.

C. VI. The causes of bishops ought not to be examined before princes.

Likewise Gregory to the Empress Constantina, [book IV, letter 34]. If the causes of bishops entrusted to me are disposed of before our most pious lords through the patronage of others, what am I, unhappy man, doing in this church? But that my bishops despise me and have recourse against me to secular judges, I give thanks to almighty God and ascribe it to my sins. Yet I suggest this briefly: I shall wait a little, and if they delay coming to me, I shall in no way cease to exercise canonical strictness against them.

Causa XXII

GRATIAN. A certain bishop swore to something false which he thought true. When this was discovered, his archdeacon swore that he would never furnish obedience to him. The archdeacon is compelled by the bishop to exhibit the customary reverence to him; the bishop is accused of double perjury, both because he swore what was false and because he compels the archdeacon to commit perjury. (Question I.) First, it is asked whether an oath is to be furnished or not. (Question II.) Second, whether one who swears to something false which he thinks true is a perjurer. (Question III.) Third, whether it was lawful for the archdeacon to deny the customary obedience to the bishop. (Question IV.) Fourth, if it is established that what the archdeacon swore is unlawful, whether it is to be observed. (Question V.) Fifth, if it is established that it is to be observed, whether the bishop is guilty of perjury who compels his archdeacon to act against his oath.

Question I

GRATIAN. PART I. That an oath is not to be furnished is proved by the authority of canonical Scripture. For Christ says to the Apostles in the Gospel: “Let your speech be: Yes, yes; no, no; but what is more than this is from evil.” Likewise James in his epistle: “Before all things, my brothers, do not swear at all.” By both authorities we are forbidden to furnish an oath. But it is one thing to approach an oath voluntarily, and another to offer an oath either to assert one’s innocence, to confirm

covenants of peace, or to persuade hearers when they are slow to believe what is useful to them. The first is prohibited; the second is conceded. For to swear is not altogether a sin. Hence it is read in the Eighth Council of Toledo, [c. 2]:

C. I. An oath is to be made for a covenant of peace.

Everything that enters into covenants of peace then subsists more firmly when the interposition of an oath strengthens it. And everything that unites the minds of friends then endures more faithfully when the bonds of an oath bind them. For everything that a witness attests is established more truly when the addition of an oath affirms it. But even if a witness is lacking, the mere imposition of an oath manifests the good faith of the innocent person.

C. II. Swearing is neither to be prohibited nor sought as a good.

Likewise Augustine on the Epistle to the Galatians, [at the end of chapter 1]. An oath that is from evil—not the evil of the one swearing, but of the unbeliever by whom he is compelled to swear—is not contrary to the Lord's command. For from this it is understood that the Lord prohibited swearing in such a way that, insofar as it lies with him, each person should not swear. Many do swear, having an oath in their mouth as though it were something great and pleasant. Certainly the Apostle knew the Lord's command, and nevertheless he swore. For those who do not think these to be oaths are not to be heard. What, then, will they do with this: "Daily I die, by your glory, brothers, which I have in Christ Jesus our Lord"? The Greek exemplars show that this is a most manifest oath. Therefore we are forbidden to swear from desire or love of swearing. For although an oath is more than "yes, yes; no, no," and is therefore from evil, nevertheless it is not from your evil but from the weakness or unbelief of those who are not otherwise moved to belief.

C. III. To commit perjury is a sin, not to swear.

Likewise Augustine in his letter [154] to Publicola. In the New Testament it was said that we should not swear at all. This seems to me to have been said, not because swearing is a sin, but because committing perjury is a monstrous sin, from which he who admonished us not to swear at all wished us to be far removed.

C. IV. To swear truthfully in necessary matters is not a sin.

The same, [sermon 30, *On the Words of the Apostle*]. So that you may know that to swear truthfully is not a sin, we find that the Apostle Paul also swore: "Daily I die, by your glory, brothers, which I have in Christ Jesus our Lord." "By your glory" is an oath; for he did not say, "By your glory I die," as though your glory caused me to die, in the manner that, if it were said that someone died by poison, by the sword, by a beast, or by an enemy, it would be understood that he died through the enemy's action, the sword's action, or the poison's action.

C. V. An oath is neither to be sought as a good nor avoided as an evil.

The same, *On the Sermon of the Lord*, [book I, c. 30]. Thus, therefore, it is understood that the Lord commanded that one should not swear, lest anyone seek an oath as a good and, through habitual swearing, slide by custom into perjury. Therefore one who understands that swearing is to be accounted not among good things but among necessary things restrains himself as much as he can so

that he does not use it unless necessity compels him—namely, when he sees that men are slow to believe what it is useful for them to believe unless it is confirmed by an oath. To this certainly pertains what is said thus: "But let your speech be: Yes, yes; no, no." This is good and to be sought; "but what is more than this is from evil." That is: if you are compelled to swear, know that it comes from the necessity of the weakness of those whom you persuade of something. That weakness is certainly an evil from which we daily pray to be delivered when we say: "Deliver us from evil." And so he did not say, "What is more than this is evil." For you who make good use of an oath do not do evil.

C. VI. To swear is not a sin.

Likewise Augustine, *On the Sermon of the Lord on the Mount*, book I. You do no evil when you make good use of an oath, which, although it is not good, is nevertheless necessary so that you may persuade another of what you beneficially advise. But it is from the evil of him by whose weakness you are compelled to swear.

C. VII. Swearing by God is permitted lest one swear by idols.

Likewise Jerome on Jeremiah, [at c. 4]. "And they will swear, 'The Lord lives,' in truth, in judgment, and in justice; and the nations will bless him and praise him." How, then, does the Gospel prohibit us from swearing? But here "oath" is said for confession and for the condemnation of the idols by which Israel used to swear. Finally, stumbling blocks are removed, and he swears by the Lord. What is said —"The Lord lives"—is an oath in the Old Testament for the condemnation of the dead things by which every idolater swore.

C. VIII. Swearing is conceded to the weak.

Likewise Jerome on Matthew, book I, [on c. 5]. Consider that the Savior did not prohibit swearing by God, but by heaven, earth, Jerusalem, and your head. And this had been conceded by the law as though to little children, so that, just as they sacrificed victims to God lest they sacrifice them to idols, so too they were permitted to swear by God—not because they acted rightly in this, but because it was better to offer this to God than to demons.

C. IX. Let a cleric who persistently swears by created things be excommunicated.

Likewise from the Fourth Council of Carthage, [cc. 61 and 62]. A cleric who swears by created things is to be rebuked most sharply; if he persists in the vice, he is to be excommunicated. But one who sings during feasts is to be restrained by the severity of the aforesaid sentence.

C. X. Let a cleric who swears by God's hair or head be deposed, and a layman anathematized.

Likewise Pope Pius. If anyone shall have sworn by God's hair or head, or shall have employed blasphemy against God in another manner, if he is of the ecclesiastical order, let him be deposed; if a layman, let him be anathematized. And if anyone shall have sworn by created things, let him be chastised most sharply and do penance according to what the synod shall have adjudged. § 1. But if anyone shall not have disclosed such a man, there is no doubt that he is to be restrained by divine condemnation. § 2. And if a bishop shall have neglected to amend these things, let him be corrected

most sharply. PART II. GRATIAN. It is asked who is more bound: the one who swears by God, or the one who swears upon the sacred Gospels? John Chrysostom answers this question, saying:

C. XI. To swear by the Gospels is not greater than to swear by God.

If there has been some case, one who swears by God seems to do something small. But one who swears by the Gospel seems to have done something greater. To these it must be said: Fools, the Scriptures are holy because of God; God is not holy because of the Scriptures.

C. XII. Perjury is to be avoided not only upon an altar or relics but also in common speech.

Likewise Jerome. We have it written in the law of God: "You shall not swear falsely in my name, nor pollute the name of your God in vain." Therefore all are to be admonished diligently to avoid perjury, not only upon an altar or the relics of saints but also in common speech.

C. XIII. God does not prohibit swearing.

Likewise Isidore, *Sentences*, book II, [c. 31]. To swear is not contrary to God's command, but when we make a practice of swearing, we incur the crime of perjury.

C. XIV. Swearing is not a sin.

Likewise Augustine, *On the Words of the Apostle*, sermon 28, [otherwise 30]. If swearing were a sin, it would not have been said in the old law: "You shall not swear falsely; you shall render your oaths to the Lord." For a sin would not be commanded to us. Likewise: § 1. We do not tell you that we do not swear. For if we say this, we lie. So far as it pertains to me, I do not swear; but, so far as it seems to me, when compelled by great necessity—when I see that unless I do so I am not believed, and that it is not expedient for the one who does not believe me not to believe—with this reason weighed and this consideration balanced, I say with great fear: "Before God," or "God is my witness," or "Christ knows that it is thus in my mind." And I see that this is more, that is, that it is more than "yes, yes; no, no." But what is more is from evil—not from the one swearing but from the one not believing. PART III. GRATIAN. From the preceding it is gathered that to swear is not a sin; nevertheless, it is not to be sought as a good, lest by a habit of swearing we fall into perjury. But since it is said to proceed from the evil of the one who does not believe, it seems that, even if swearing is not a sin, nevertheless to receive an oath is evil. Yet by the name of evil, not wickedness but the penalty of sin is understood. For that unbelief by which we are compelled to swear proceeded from penal weakness. But just as swearing itself is not a sin, so receiving an oath from someone is not evil. Hence Augustine writes to Publicola, [letter 154]:

C. XV. We are not forbidden to receive an oath.

Although it has been said that we should not swear, I do not remember having read anywhere in the holy Scriptures that we should not receive an oath from someone. PART IV. GRATIAN. But it is asked whether the pledged faith of one who swears by demons is to be used. Concerning these matters Augustine writes thus to Publicola, [in the same letter 154]:

C. XVI. It is lawful to rely upon the pledged faith of one who swears by demons that he will preserve it.

It troubles you whether the pledged faith of one who has sworn by demons that he will preserve it is to be relied upon. Here I wish you first to consider whether, if someone has sworn by false gods that he will preserve his pledge and has not preserved it, he does not seem to you to have sinned twice. For if by such an oath he preserved the pledge he had promised, he would be judged to have sinned only because he swore by false gods. But no one would rebuke the fact that he preserved his pledge. Now, however, because he both swore by those by whom he ought not and acted contrary to the pledge he had promised, he has certainly sinned twice. And through this, one who relies upon the pledged faith of a person who is known to have sworn by false gods—and relies upon it not for evil but for something lawful and good—does not associate himself with that person's sin by which he swore by demons, but with his good covenant by which he preserved his pledge. Nor here do I speak of preserving that faith by which those who are baptized in Christ are called faithful. For that is far different and far removed from the faith of human agreements and covenants. Nevertheless, without any doubt it is a lesser evil to swear truthfully by false gods than deceitfully by the true God. For the holier that by which one swears is, the more punishable the perjury is. § 1. Another question is whether one who causes an oath to be sworn to himself by false gods does not sin, because the one who swears to him swears by the false gods whom he worships. Those testimonies that you yourself recalled concerning Laban and Abimelech can support this question—if, nevertheless, Abimelech swore by his own gods, just as Laban swore by the God of Sabaoth. GRATIAN. Thus also, when the Romans are read in the Book of Maccabees to have confirmed peace with the Jews, they are to be understood to have sworn by false gods, just as the Jews swore by the true God. Thus also concerning an oath made by created things it is to be understood that swearing by created things is indeed evil, because it is prohibited by God; but to preserve what is sworn is good, so that the sin of lying and deceit may be avoided. § 1. But it is objected that Joseph, a holy man, swore by created things when he said to his brothers: "By the welfare of Pharaoh, you shall not depart from here." § 2. But it must be known that the saints swore not so much by created things as by the creator of created things, nor did they venerate anything in created things other than their Creator, as Joseph did, who, in swearing by Pharaoh, venerated in him the fact that he had been placed among the lowest by God's judgment. Hence the Apostle says: "Every power is from the Lord God." Likewise Christ to Pilate: "You would have no power over me unless it had been given to you from above." But God prohibited swearing by created things, lest either, after the manner of the gentiles, some divine power should be believed to be present in created things, or, by judging created things contemptible, we should reckon promises made by them as nothing. § 3. But it is asked which is more grave: to swear deceitfully by created things, or by the Creator? For one who swears falsely by created things is guilty in two ways: both because, contrary to the prohibition, he swears by that by which it is not lawful for him to swear—a sin from which one who swears only by the Creator is immune—and because he ensnares his neighbor by deceit, which one who swears falsely by the Creator also does. But if perjury is the more punishable the holier that by which one swears is, it appears that, although one who swears falsely by created things sins in two ways, nevertheless one who swears falsely by the Creator subjects himself to a graver penalty. PART V. § 4. But the penalty for perjury is most grave; if anyone, fearing it, is unwilling to come to confession, he is to be cast from the fellowship of the faithful. Hence Pope Eutychian:

C. XVII. Let one who is unwilling to do penance for perjury lack the fellowship of the faithful.

It is also to be preached that the faithful avoid perjury and abstain from it with the greatest care, knowing that this is a great crime, prohibited in the law, the Prophets, and the Gospel. But we have heard that certain persons esteem this crime lightly and impose a somehow light measure of penance upon perjurers. They ought also to know that such a penance ought to be imposed for perjury as for adultery, fornication, homicide committed voluntarily, and the other criminal vices. § 1. But if anyone, after perpetrating perjury or any criminal sin, is unwilling to come to confession because he fears a long penance, he is to be repelled from the church, or from the communion and fellowship of the faithful, so that no one may eat or drink with him or receive him in his house.

Question II

GRATIAN. PART I. That perjury is to swear falsely is easily proved. For Augustine says in the Book of Psalms upon "The earth is the Lord's":

C. I. One who will act otherwise than he promises commits perjury.

One who will act otherwise than he promises swears deceitfully, since perjury is wickedly to deceive one who believes.

C. II. What companions an oath ought to have.

Likewise Jerome on Jeremiah, book II. It is to be observed that an oath is to have these companions: truth, judgment, and justice. If these are lacking, it will by no means be an oath, but perjury. GRATIAN. Likewise, one who swears falsely lies. But to swear while lying is nothing other than to commit perjury. § 1. Therefore, since all who speak a lie are to be destroyed, according to that statement of the Psalmist, "You will destroy all who speak a lie," much more condemnable are those who are convicted of forswearing themselves by lying, because they take the name of their God in vain. § 2. But it is one thing to swear falsely, another to swear deceitfully. For not everyone who will act otherwise than he promises swears deceitfully. Although the Apostle was going to act otherwise than he promised the Corinthians in the first epistle, when he said, "I will come to you," nevertheless he did not swear deceitfully or promise falsely. For one swears deceitfully or promises falsely when it is in his mind not to act as he promises; but one who promises what is false but thinks it true neither swears deceitfully nor promises falsely. Hence Augustine, *On the Words of the Apostle*, sermon 28, [otherwise 30]:

C. III. Concerning one who swears to something false which he thinks true.

Men swear falsely either when they deceive or when they are deceived. A man thinks that what is false is true and swears rashly; or he knows or thinks that it is false and nevertheless swears to it as true, and no less swears with criminality. But these perjuries that I have mentioned are different. Suppose that one swears who thinks that the thing for which he swears is true: he thinks that it is true, and nevertheless it is false. This man does not commit perjury from his intention; he is deceived. He holds as true what is false; he does not knowingly interpose an oath for a false thing. Give me another. He knows that it is false, says it is true, and swears to it as though what he knows

to be false were true. You see how detestable this beast is and how it is to be exterminated from human affairs. Who would wish to become such a person? All men detest such things. Suppose another. He thinks that it is false and swears that it is true. Perhaps it is true. For example, so that you may understand: it rained in that place. You question a man, and he says that it rained, and it suits his business to say, "It rained," but he thinks that it did not rain: he is a perjurer. It matters how the word proceeds from the mind. Nothing except a guilty mind makes the tongue guilty. GRATIAN. Therefore, because this man's mind was not guilty—he did not know that what he swore was true was false—and he seemed to himself to have ascertained with great diligence, not rashly or negligently, that what he swore falsely was true, he is by no means to be judged guilty of perjury. Likewise, when it is said that one who swears falsely lies, this ought not to be understood universally. For not everyone who says what is false lies, just as not everyone who lies says what is false. Hence Augustine in the *Enchiridion*, [c. 22]:

C. IV. To say what is false while thinking it true is not to lie.

But one who lies speaks contrary to what he perceives in his mind, with the will to deceive. § 1. And words have certainly been instituted for this reason: not that men should deceive one another through them, but that by them each person should bring his thoughts to another's knowledge. Therefore to use words for deceit, not for that for which they were instituted, is a sin. § 2. Nor for this reason is any lie to be thought not to be a sin because we can sometimes benefit someone by lying. For we can also do so by stealing, if a poor person to whom it is openly given experiences an advantage and the rich person from whom it is secretly taken experiences no disadvantage; nor for this reason would anyone say that such a theft is not a sin. And below, [c. 18]: § 3. No one is to be judged a liar who says what is false while thinking it true, because, insofar as it lies with him, he himself does not deceive but is deceived. Therefore one who too incautiously believes false things and holds them as true is to be accused not of lying but sometimes of rashness. Rather, on the contrary, insofar as it lies with him, one lies who says what is true while thinking it false. For insofar as his mind is concerned, because he does not say what he perceives, he does not say what is true, although what he says is found to be true. Nor is one in any way free from lying who unknowingly speaks truth with his mouth but knowingly lies by his will. Therefore, without considering the things themselves concerning which something is said, but only the intention of the speaker, one who unknowingly says what is false because he thinks it true is better than one who knowingly bears an intention to lie while not knowing that what he says is true.

C. V. One who does not have the intention to deceive does not lie.

Likewise Pope Gelasius. The blessed Apostle Paul is not for that reason to be believed—far be it—to have deceived or to have been contrary to himself because, although he had promised that he would go to Spain, being occupied by greater causes through divine ordering, he was unable to fulfill what he promised. So far as his own will was concerned, he declared what he truly would have wished to accomplish. So far as concerns the secrets of the divine counsel—which, as a man, although full of the Spirit of God, he was unable to recognize in their entirety—he omitted these because he was forestalled by heavenly ordering. § 1. Nor because the blessed Apostle Peter, from the disposition of divine reverence, answered the Lord himself, "You shall never wash my feet," will he be thought—far be it—to have deceived or in no way to have stood by his judgment, because he soon yielded to that

same divine will and, constrained by the reasons of human salvation, permitted with ready will to be done what he had said he would not do. PART II. GRATIAN. Therefore one who, by swearing to something false, lies is one who knows that what he swears is false. For a lie is, as Augustine says, "a false signification with the will to deceive." § 1. But since deceiving is always a matter of the will, while being deceived is a matter either of weakness or rashness, and since what proceeds from the will is graver than what proceeds from rashness or weakness, it sometimes happens that to be deceived is either no sin or a minimal sin, and sometimes, from the diverse consideration of the matters themselves, it is less to deceive than to be deceived. Hence the same Augustine in the *Enchiridion*, [c. 21]:

C. VI. To be mistaken in matters that do not pertain to faith is either a small sin or none.

In matters in which it makes no difference to attaining the kingdom of God whether they are believed or not, and whether they are thought true or false, to err in these—that is, to think one thing in place of another—is not to be judged a sin; or if it is, it is a minimal and most slight sin.

C. VII. In matters that pertain to faith, to be deceived is graver than to deceive others.

In the same, [c. 18]. In consideration of the things themselves that are said, there is so great a difference that, although, so far as a person's will is concerned, it is in every case a lesser evil to be deceived than to lie, nevertheless it is far more tolerable to lie in matters separated from religion than to be deceived in those matters without faith in or knowledge of which God cannot be worshiped. PART III. GRATIAN. Likewise, what is said—"You will destroy all who speak a lie"—is not to be understood of every lie. For there are certain lies in which, even if there is some fault, they are nevertheless not condemnable; indeed, they are to be held as though they were not lies. There are also other lies that are of graver fault, of which "You will destroy all who speak a lie" is understood. § 1. But so that it may appear which lies are venial and which condemnable, it must be distinguished how many kinds of lies there are. Concerning these Augustine writes in the book *On Lying*, [c. 14]:

C. VIII. How many kinds of lies are there?

The first is a deadly lie, to be avoided by far, which is made in the teaching of religion; no one ought to be brought to this lie under any condition. The second is one that injures someone unjustly and is such that it benefits no one and harms someone. The third benefits one person in such a way that it harms another, although it does not harm him unto bodily defilement. The fourth is made solely from a lust for lying and deceiving, which is a monstrous lie. The fifth is made from a desire to please by pleasant speech. When all these have been entirely avoided and rejected, there follows the sixth kind, which harms no one and benefits someone—as if someone, knowing where another's money that is to be unjustly taken away is located, were to lie that he does not know. The seventh harms no one and benefits someone—as if one were to lie because he is unwilling to betray a man sought for death. The eighth kind of lie harms no one and benefits someone in this respect: that it protects someone from bodily defilement. § 1. Therefore one must not lie in the teaching of piety; the first kind of detestable lie is a great crime. Therefore one must not lie by the second kind, because injury is to be done to no one. One must not lie by the third kind, because no one is to be aided with injury to another. One must not lie by the fourth kind, on account of the lust for lying, which is vicious

through itself. One must not lie by the fifth kind, because not even truth itself is to be uttered to men for the sake of pleasing them; how much less a lie, which through itself, because it is a lie, is certainly base? One must not lie by the sixth kind, for the truth of testimony is not rightly corrupted for anyone's temporal advantage and safety; but no one is to be led to eternal salvation with the assistance of a lie. Nor must one lie by the seventh kind, for anyone's temporal advantage or safety is not to be preferred to the perfecting of faith, nor ought anyone to experience himself as being so badly moved by our deeds rightly done that he becomes even more dejected in spirit and more remote from piety. Nor must one lie by the eighth kind, because among goods the chastity of the mind is preferred to the chastity of the body, and among evils what we ourselves do is more condemnable for us than what we permit to be done. § 2. But among these eight kinds, the farther one withdraws from the first, the less he sins when he lies. But whoever shall think that there is any kind of lie that is not a sin will shamefully deceive himself when he judges himself an honorable deceiver of others.

C. IX. It is not lawful for anyone to lie for the sake of humility.

Likewise Augustine, *On the Words of the Apostle*, [sermon 31, otherwise 29]. When you lie for the sake of humility, if you were not a sinner before you lied, by lying you become what you had avoided. Truth is not in you unless you call yourself a sinner in such a way that you also know yourself to be one. But truth itself is that you say what is. For how is there humility where falsity reigns?

C. X. On the same.

Likewise Gregory, [book XXVI of the *Moralia*, c. 2]. Those who entangle themselves in a lie are incautiously humble.

C. XI. It is not lawful to lie so that arrogance may be avoided.

Likewise Augustine on John, [tractate 43]. Let arrogance not be avoided in such a way that truth is abandoned.

C. XII. Not every lie is an equal sin.

Likewise in the *Enchiridion*, [c. 18]. But it does not seem absurd to me that every lie is indeed a sin, while it makes a great difference with what intention and concerning what matters each person lies. For one who lies with the will to aid does not sin in the same way as one who lies with the will to harm, nor does one who by lying sends a traveler upon a contrary road do as much harm as one who corrupts the way of life by a deceiving lie.

C. XIII. No one is to be deceived in any manner.

Likewise Augustine in the book *On the Conflict of Vices and Virtues*, [c. 19]. One ought to deceive no one either by an artful lie or by a simple word, because in whatever manner a person lies, he kills his soul.

C. XIV. A perfect person ought not to lie for someone's temporal life.

Likewise Augustine on the Fifth Psalm, [at the verse "You will destroy all who speak"]. Let no one think that a perfect and spiritual man ought to lie for this temporal life, by the death of which neither

his own soul nor another's is killed. But because it is one thing to lie and another to conceal the truth —indeed, it is one thing to say what is false and another to keep silent about what is true—if perhaps someone is unwilling to betray a man to this visible death, he ought to be prepared to conceal the truth, not to say what is false, so that he neither betrays nor lies, nor kills his own soul for the body of another. § 1. But there are two kinds of lies in which there is no great fault, although they are nevertheless not without fault: when we either jest or lie while aiding our neighbor. The former, in jesting, is not pernicious for this reason: because it does not deceive. For the one to whom it is said knows that it was said for the sake of jesting. The latter is milder for this reason: because it retains some benevolence. § 2. But that which does not have a double heart is not even to be called a lie. For example, if a sword should be entrusted to someone and he should promise that he will return it when the person who entrusted it asks for it, and if perhaps the latter, raging, should demand his sword again, it is manifest that it is not to be returned, lest he kill either himself or others, until sanity is restored to him. Here the one to whom the sword was entrusted does not have a double heart for this reason: when he promised that he would return it to the one asking, he did not think that the man might demand it while raging. § 3. It is manifest that sometimes keeping silent about the truth is not to be blamed, but saying what is false is not found to have been conceded to the saints.

C. XV. We ought not to provide for another's safety by our sin.

The same in the book *On Lying*, [c. 17]. Let a man do what he can even for the temporal safety of men. But when matters have come to such a point that he cannot provide for such safety except by sinning, let him then judge that he has nothing he can do, since he has perceived that the remaining course is what he will rightly do.

C. XVI. On the same.

Likewise Isidore in the *Synonyms*, [c. 10]. Flee every kind of lie with the greatest care. Speak falsely neither by chance nor deliberately; do not strive to lie in order to render assistance, nor defend anyone's life by any deceit. Beware of a lie in all things.

[PALEA.

C. XVII. On the same.

Likewise Augustine in the book *On Lying*, c. 6. If anyone who could be freed from death by your lie should flee to you, you are not to lie. For the mouth that lies kills the soul. And below: § 1. Therefore, since eternal life is lost by lying, one must never lie for anyone's temporal life.]

C. XVIII. Statements made in jest concerning things that are not are not reckoned as lies.

Likewise Augustine in the book *Questions on Genesis*, c. 45, [question 145]. What Joseph says to his brothers—"Did you not know that there is no man like me in divination?"—and the fact that he also commanded this to be said to them through the man concerning this divination: what he means is commonly asked. Or, because it was said not seriously but in jest, as the outcome taught, is it not to be held a lie? For lies are performed seriously by liars, not in jest. But when things that are not are said as though in jest, they are not reckoned as lies. GRATIAN. But in the Old Testament many

things were permitted whose examples it is not lawful to use today. Hence Gregory, [book XVIII of the *Moralia*, c. 3]:

C. XIX. It is not lawful to lie by the example of the ancients.

If anyone wishes to defend his lie by the Old Testament because perhaps it harmed certain persons less there, he must say that the seizure of others' property and the repayment of injury, which were conceded there to the weak, cannot harm him. It is clear to all with how great a severity Truth pursues all these things—Truth who, with the shadow of his signification now laid aside, is manifested to us in true flesh.

C. XX. The midwives were rewarded for their piety but punished for their lie.

The same, [in the same book, c. 2]. If any fault is customarily purged by a subsequent pious work, how much more easily is this fault wiped away when piety itself, the mother of the good work, accompanies it? But certain persons strive to assert from the midwives' deceit that this kind of lie is not a sin, especially because, when they lied, it is written "that the Lord built houses for them." In that recompense it is more clearly known what the fault of lying merits. For the reward of their kindness, which could have been repaid to them in eternal life, was diverted to an earthly recompense by the preceding fault of lying. GRATIAN. Abraham also, speaking to his servants, said: "Sit here with the ass; I and the boy will pass over to that place, and when we have worshiped, we will return to you." Although he had resolved that he would do something else, nevertheless he is excused from lying. Hence Ambrose in the book *On the Patriarchs*: "He prophesied what he did not know. He alone intended to return after his son had been sacrificed. But the Lord spoke through his mouth what he was preparing. Yet he spoke captiously with the servants lest, when the affair was known, either someone impede him or make an uproar with groaning or weeping." PART V. § 1. Sometimes by commanding something we signify that we will it to be done, although we do not will it to be done, but seek a test of obedience, just as Abraham is read to have been tested by God when he was commanded to sacrifice his son, whom the Lord did not will to be killed by him. Hence in the same book the same Ambrose says: "For God did not will the son to be sacrificed by his father, nor did he who offered a ram to be sacrificed for the son will this offering to be completed, but he tested the father's disposition, whether he would prefer God's commands to his son." And below: "'Do not lay,' he said, 'your hand upon the boy, nor do anything to him. I investigated your disposition; I did not exact the deed. I tested your mind, whether you would not spare even your most beloved son because of me. I do not take away what I myself gave, nor do I begrudge the heir whom I bestowed upon one who had none.'"

C. XXI. A useful simulation is to be assumed at the proper time.

Likewise Jerome, [in the letter to the Galatians, c. 2]. Let the example of Jehu, King of Israel, teach us that a useful simulation is to be assumed at the proper time. When he could not kill the priests of Baal unless he pretended that he wished to worship the idol, he said: "Gather to me all the priests of Baal. Ahab served him in few things; I will serve him in many." And David, when he changed his countenance before Abimelech, who dismissed him, and he departed. Nor is it remarkable that even just men nevertheless simulate certain things for a time for their own and others' safety, since our Lord himself, having neither sin nor the flesh of sin, assumed the simulation of sinful flesh so that,

condemning sin in the flesh, he might make us the justice of God in himself. GRATIAN. Behold which lies are venial and which condemnable. § 1. But it is asked why Augustine says that one must not lie for someone's temporal life, when Abraham, descending into Egypt, asked Sarah to lie that she was his sister, saying: "I know that you are a beautiful woman, and that, when the Egyptians see you, they will say, 'She is his wife,' and they will kill me and preserve you. Say, therefore, I beseech you, that you are my sister, so that it may be well with me because of you and my soul may live by your favor." But Abraham wished not that a lie be said, but that the truth be kept silent. Hence the same Augustine says in *Questions on Genesis*, [question 26]:

C. XXII. How Abraham, who said that Sarah was his sister, is excused from lying.

It is asked why the Patriarch wished to lie by saying that Sarah was his sister, and did not rather entrust the matter to God, who, if he wished, could preserve her chastity before Pharaoh. But he wished the truth to be concealed, not a lie to be told. For she is called his sister because she was his brother's daughter. And in this it is shown that no one ought to tempt his God when he has something that he may do by reasonable counsel. He did what he could; what he could not do he entrusted to God, in whom he hoped, and neither faith nor hope failed him. But if, when questioned, he had indicated that she was his wife, he would have entrusted two things to God: his own life and his wife's chastity. GRATIAN. Likewise it is objected that Jacob by lying both benefited himself and harmed another, and nevertheless is not reproved but commended. But Jacob, by saying that he was Esau the firstborn, did not lie. For he did not say that he was firstborn by birth, but duly entered upon the right of primogeniture when the other sold it. Thus Christ also said that John was Elijah—not in person, but in imitation of virtue. Therefore Jacob was Esau, not by birth, as we have said, but by the purchase of the rights of the firstborn, passing from one not firstborn into the firstborn, just as Esau himself, by selling the rights of the firstborn, deserved to be made from the firstborn one not firstborn. Thus also the Jews, although they were children of Abraham by the flesh, because they were not his children by imitation, are not reckoned among the children of Abraham but are called children of the devil, whose children they are not by birth but by imitation. Hence they deserved to hear from the Lord: "If you are children of Abraham, do the works of Abraham. But now you seek to kill me, a man who has spoken the truth to you. Abraham did not do this. You are of your father the devil, and you will to do the desires of your father." § 1. Conversely, although the gentiles according to carnal origin were strangers to Abraham, nevertheless by imitation of faith and justice they succeeded among the children of Abraham. Hence it is said to them by the Apostle: "But if you are Christ's, then you are Abraham's seed." Therefore the same Apostle, writing to the Romans, says: "O Jew, if you are circumcised but do not observe his law, your circumcision has become foreskin; just as the foreskin, if it keeps the just requirements of the law, is reckoned as circumcision." Therefore, as is gathered from the foregoing, imitation in deed is preferred to origin in the flesh. Thus Jacob truthfully, not falsely, said that he was Esau; and not by lying but by speaking truth did he benefit himself, while he did not harm the other, because he received the blessing owed to himself and did not surreptitiously take another's. § 2. But this bishop concerning whom the case is being considered, although he swore falsely, nevertheless, because, as was said above, nothing but a guilty mind makes the tongue guilty, is by no means held guilty of perjury. This is also proved by the example of Saul. When he was in the camp about to fight against the Philistines, he swore that he would kill whoever ate before sunset. But his son Jonathan, not having heard the king's oath, after he

had made a great slaughter of the enemy by fighting and had wrought salvation in Israel, being afflicted by hunger saw a honeycomb, which he took with the royal staff that he carried in his hands and ate. Immediately his eyes, which hunger had almost closed, were opened, and his face was made cheerful. When this was discovered, Saul wished to deliver him to death; but, appeased by the prayers and pious supplication of the people, he revoked the sentence of death, so that the one through whom salvation had been given in Israel and by whose fighting that people had been freed from the hands of the enemy might not be killed. Behold, Saul swore falsely, because, provoked by the prayers of the people, he did not do what he had decreed by swearing that he would do. Nevertheless, he is not accused as guilty of perjury, because, insofar as it lay with him, he fulfilled what he swore when he gave a sentence of death against his son, which he revoked not from carnal affection but by the people's supplication.

Question III

GRATIAN. Therefore, since, as has been shown by reason and example, the bishop was not guilty of perjury, the customary obedience ought not to have been denied him by the archdeacon, since even if it were established that he was criminal, nevertheless, before a definitive sentence, as was shown above, it would be lawful for none of his clerics to withdraw from him. It is therefore established that what the archdeacon confirmed by oath is unlawful. Hence it is rightly asked whether it ought to be observed or not.

Question IV

GRATIAN. PART III. That unlawful oaths ought not to be observed is read in the Eighth Council of Toledo, [c. 2], in which it was established thus:

C. I. It is better not to fulfill the vows of a foolish promise than to commit a crime.

If in public records of oaths—may God avert it—an unlawful or evil condition had been alleged by any persons, which would compel someone either to slaughter the life of his father or to violate a most consecrated virgin, would it not be more tolerable to reject the vows of a foolish promise than, through observance of useless promises, to fulfill a measure of crimes that ought to be abhorred?

C. II. Sometimes it is not expedient to discharge a promised oath.

Likewise Ambrose, *On Duties*, book I, [c. 50]. Sometimes it is even contrary to duty to discharge a promised oath, as Herod, who swore that he would give the daughter of Herodias whatever she asked, furnished the death of John lest he deny what he had promised. GRATIAN. Likewise in the sermon of Saint Augustine the Bishop on the beheading of Saint John the Baptist, which begins, "When the holy Gospel was read":

C. III. It was piety that David did not kill Nabal as he had sworn.

That David did not fulfill his oath through the shedding of blood was greater piety. I see David, a pious and holy man, to have fallen into a rash oath and to have preferred not to do what he had sworn rather than to fulfill his oath by the shedding of a man's blood.

C. IV. On the same. Likewise.

David swore rashly, but through greater piety he did not fulfill the oath. § 1. Behold, although holy David was bound by an oath, he did not shed a man's blood; but who will be able to deny that he swore falsely? Of two sins he chose the lesser, but it was less in comparison with the worse. For, weighed by itself, to swear falsely is a great evil.

C. V. Base vows are not to be observed.

Likewise Isidore in the *Synonyms*, book II. In evil promises, break your pledge. In a base vow, change your decree. Do not do what you vowed incautiously. A promise that is fulfilled by crime is impious.

C. VI. An oath by which evil is incautiously promised is not to be observed.

Likewise Bede in homily 44, [on the feast of the beheading of Saint John]. If perhaps it should happen that we swear somewhat incautiously to something which, if observed, would incline toward a worse outcome, let us know that it is freely to be changed by more salutary counsel, and that under pressing necessity we are rather to commit perjury than, for the sake of avoiding perjury, to turn aside into another, graver crime. Finally, David swore by God to kill Nabal, a foolish and impious man, and to destroy everything that pertained to him. But immediately, at the first intercession of Abigail, a prudent woman, he remitted his threats, called the sword back into its sheath, and did not grieve that he had contracted any fault for such perjury.

C. VII. Of two evils, one ought to choose the lesser.

Likewise, [in the same place]. Not only in swearing but in everything that we do, this moderation is to be observed with especial care: if perhaps through the snares of the cunning enemy we fall into such a lapse from which we cannot rise without some contagion of sin, we should seek that passage of escape in which we perceive that we will suffer less danger.

C. VIII. It is more tolerable not to fulfill an oath than to do what is base.

Likewise Ambrose, *On Duties*, [book III, c. 12]. Let each person bring forth simple speech; let him possess his vessel in sanctification and not ensnare his brother by a circumvention of words. Let him promise nothing dishonorable; or, if he has promised, it is more tolerable not to do what was promised than to do what is base. Frequently many bind themselves by the solemnity of an oath, and although they themselves have recognized that the promise ought not to have been made, nevertheless, out of regard for the oath, they do what they pledged, as we wrote above concerning Herod, who basely promised a reward to the dancing girl and cruelly discharged it. It is base that a kingdom is promised for dancing; it is cruel that the death of the Prophet is given for reverence of an oath. How much more tolerable would perjury have been than such an oath? If, nevertheless, that which he had sworn when drunk amid wine and promised under oath amid choruses of dancers could be called perjury. The Prophet's head is brought in upon a platter, and that which was a matter of friendship was reckoned to be fidelity. And after a few things, discoursing concerning Jephthah: § 1. "A miserable necessity," he says, "which is discharged by parricide. It is better not to vow that which the one to whom it is promised does not wish to be discharged to himself." And a little afterward: § 2. "Therefore not all promises are always to be discharged. Finally, the Lord himself, as Scripture indicates, frequently changes his sentence."

C. IX. The immutable God sometimes changes his statutes.

Likewise from the Council of Toledo, [VIII, c. 2]. The nature of the highest God, immutable and always existing as the same, is often read in the sacred writings to have changed its promises and to have tempered a sentence for the sake of mercy. Hence, although he is impassible and immutable, nevertheless both his oaths and his repentance, which stand covered in sacred mysteries, are frequently read of. For God to swear is in no way to overturn what has been ordained by himself; but to repent is to change those same ordinances when he wishes. For thus he says through Jeremiah: "Suddenly I will speak against a nation and against a kingdom, that I may uproot, destroy, and ruin it. If that nation shall have done penance for its evil, I too will repent of the evil that I thought to do to it."

C. X. It belongs to a wise man to retract what he speaks badly.

Likewise Augustine. It is a matter of great wisdom for a man to retract what he has spoken badly.

C. XI. With what penalty one who makes an unlawful oath is to be struck.

Likewise from the Council of Lérida, [c. 8]. One who has bound himself by an oath so that, while litigating with anyone, he will in no way return to peace is, for perjury, to be separated for one year from communion in the body and blood of the Lord, and is to absolve his guilt by alms, tears, and as many fasts as he can. But let him hasten quickly to come to charity, which covers a multitude of sins.

C. XII. Not all promises are to be discharged.

Likewise. Not all promises are always to be discharged. Finally, the Lord himself frequently changes his sentence, as Scripture indicates.

C. XIII. On the same.

Likewise Isidore, *Sentences*, book II, [c. 31]. An oath by which evil is incautiously promised is not to be observed, as if someone should promise an adulteress that he will preserve perpetual fidelity by remaining with her. For it is more tolerable not to fulfill the oath than to remain in the crime of fornication.

C. XIV. Let one who swears badly do penance.

Likewise from the Council of Toledo, c. 9. It is necessary that one who swears badly do worthy penance because, contrary to the Lord's command, he took his name in vain, since it is written in Exodus: "For the Lord will not hold guiltless the one who has taken the name of the Lord his God in vain."

[C. XV.] Likewise in Leviticus.

"You shall not swear falsely in my name, nor pollute the name of the Lord your God; I am the Lord." Nevertheless, let him by no means do the evil that he vowed by an oath that he would do, because foolish vows are to be broken.

C. XVI. An oath by which evil is incautiously promised is not to be observed.

Likewise from the Decree of Pope Soter, c. 3. If perhaps it should happen that we have sworn somewhat incautiously to something which, if observed, would incline toward a worse outcome, let us know that it is to be changed by more salutary counsel, and that under pressing necessity we are rather to commit perjury than, on account of the oath that was made, to turn aside into another, greater crime.

C. XVII. Rashness is amended when an incautious determination is dissolved.

Likewise from the Council of Elvira, c. 1. An incautious determination is laudably to be dissolved; this is not transgression but the correction of rashness.

C. XVIII. An unlawful oath is not to be observed.

Likewise, the fourth action of the Seventh Synod. John, the representative of the eastern sees, said: "The discourse of our father Sophronius signifies that it is better for one who swears to commit perjury than to observe an oath in the breaking of sacred images. But we say this because certain persons excuse themselves by an oath." Patriarch Tarasius said: "Because Father Sophronius knew the goodness of God, for that reason he wished to transgress the impious oath." Likewise: § 1. Patriarch Tarasius said: "Herod observed his oath and perished; but Peter denied with an oath, and, having been converted, he wept and was saved. For the good God forgives every sin if anyone repents with his whole heart." The holy synod said: "Thus holy Scripture teaches." Likewise Leontius, Bishop of Phocaea, said: "It is written: 'Do not love a lying oath.' For this reason let our lying oath be dissolved as having no force."

C. XIX. Oaths made contrary to divine commands are not to be observed.

Likewise Isidore. If anyone shall have been forestalled so that he determines to do any of those things that do not please God, let him do penance, and let what was established contrary to the command of the Lord be revoked as void. Likewise Jerome in the book *On the Nature of Things*: § 1. Indeed, oaths contracted in three ways are to be dissolved. First, when someone swears badly. Second, when someone swears incautiously, not thinking this to be a sin. Third, if boys or girls in their parents' house shall have bound themselves by an oath and their fathers, after hearing of it, contradict them. PART II. GRATIAN. Behold, unlawful oaths are laudably dissolved and condemnably observed. This is to be understood when an unlawful oath is abandoned so that one may return to good. § 1. But if it is abandoned so that one may pass into another evil, the unlawful oath is condemnably observed, but is more condemnably contemned. Hence Augustine, *On the Good of Marriage*, [c. 4]:

C. XX. A pledge that is employed for committing sin is not to be called fidelity.

If fidelity is employed for committing sin, it is remarkable if it is called fidelity. Nevertheless, of whatever kind it may be, if one also acts contrary to it, it is worse—unless it is abandoned for this reason, that one may return to true and lawful fidelity, that is, that the sin may be amended when the depravity of the will has been corrected. It is as if someone, when he cannot despoil a man alone, should find a partner in iniquity and make a pact with him that they will do this together and divide

the spoil; and, when this crime has been committed, he alone should take away the whole. The other man indeed grieves and complains that fidelity was not preserved toward him; but in his very complaint he ought to consider that fidelity should instead have been preserved toward human society in a good life, so that unjust plunder would not be taken from a man, if he perceives how unjustly fidelity was not preserved toward him in the partnership of sin. For the former is faithless in both respects and certainly is to be judged more criminal.

C. XXI. If a pledge is not preserved so that one may return to good, it is not for that reason said to be violated.

Likewise. If a woman, after violating marital fidelity, preserves fidelity toward an adulterer, she is certainly evil; if she does not preserve it even toward the adulterer, she is worse. But if she repents of the crime and, returning to marital chastity, rescinds the adulterous agreements and promises, I wonder whether even the adulterer himself will think her a violator of fidelity. GRATIAN. From these things, therefore, it appears that if anyone, as we said, does not observe an unlawful oath so that he may incline toward another pernicious evil, he sins the more gravely, the more condemnably sins are accumulated upon sins. But if it is abandoned so that one may return to good, no fault is contracted for such perjury; rather, it is to be lamented if it has happened that we sinned in anything on the occasion of that oath. Hence Augustine writes to Severus, Bishop of Milevis, who consulted him concerning a certain Hubald. Hubald had been compelled by the relatives of a certain concubine to swear that he would take her as his wife and would no longer furnish necessities to his mother or brothers. Therefore, as we have said, blessed Augustine writes back to Severus, Bishop of Milevis, speaking thus:

C. XXII. Concerning a certain Hubald, who swore that he would not furnish necessities to his mother and brothers.

Among other things, as you had asked, I inquired of our father Ambrose what you, dearest brother, are to do concerning Hubald, your parishioner, who, after being captured and driven by fear of death, confirmed by oath to his concubine that he would take her as his wife, expel his own mother from the house together with his brothers, and never furnish them anything for sustenance. But because it is not a sin to take as wife the woman whom he previously had, let the marriage be firm and stable in God. § 1. Furthermore, an oath is not found to have been instituted for this reason: that it should be a bond of iniquity, matricide, fratricide, or any crime whatsoever. Nor do I believe that an oath ought to be made for this purpose: that an unjust oath should be the stripping of their goods from those who swear unjustly and eternal condemnation to the one who receives it. For the penalty of perjury strikes, and he will be struck down as by hail like a murderer in the final examination by the just Judge, through whom the sacrosanct Gospel is brought forward for something unjust, unlawful, and in no way pleasing to God, as though it were testimony to a just and humane petition. § 2. Therefore let Hubald support his mother and brothers, and let him lament if, through compulsion and fear of the oath, anything was lacking to his mother. But let those who compelled him to swear what he ought not be held bound by the guilt of the perjury in which they were implicated. For an injury unjustly inflicted is the disgrace of the one who does it. Nor is that which an unlawful condition of necessity extorted in any way drawn to the reproach of a coerced will. PART III. GRATIAN. But although by all these authorities unlawful oaths are proved not to be observed, it is objected that Joshua did not destroy the Gibeonites contrary to the Lord's command because the elders of Israel

had confirmed peace with them by oath. But it is to be noted that the elders of Israel, although they knew that it had been commanded by the Lord that they destroy the nations of the promised land, nevertheless, having been deceived by the Gibeonites, did not know that they were inhabitants of the land promised to them. For they came, as the history relates, with worn-out shoes and dry loaves, saying: "We are peaceful men; we have come from a distant land. The shoes are worn out on our feet; the bread has failed in our sacks. We have heard that the Lord is with you, and we have come to make peace." This speech pleased the elders of Israel, and they made peace with them. But after the third day, when the children of Israel approached the Gibeonites, those to whom the elders of Israel had sworn met them. Then, seeing that they had been deceived, they wished to destroy them; but Joshua spared them because of the oath of the elders of Israel. Hence Ambrose in the book *On Duties*, [III, c. 10]:

C. XXIII. Certain things, although prohibited by God, nevertheless are not to be avoided when confirmed by oath.

"The innocent believes every word." His readiness is not to be blamed, but his goodness is to be praised. To be innocent is this: not to know what may harm, and, even if he is circumvented by someone, nevertheless to judge concerning all men that there is fidelity in all. Inclined, therefore, by this endowment of his mind to believe the Gibeonites, Joshua arranged a covenant, granted peace, and confirmed an alliance. But when they came into their lands and the fraud was discovered—that, although they were neighbors, they had pretended that they were foreigners—the people of the fathers began to be indignant that they had been circumvented. Joshua nevertheless did not judge that the peace he had granted should be revoked, because it had been confirmed by the religious obligation of an oath, lest, while reproving another's faithlessness, he should break his own pledge. Nevertheless, he punished them with the more excellent service of ministry. The sentence was more merciful, but more lasting. GRATIAN. Therefore, the unlawful oath that is prohibited from being observed is to be understood as one that is known to be unlawful when it is sworn. But if it is not known to be unlawful, ignorance itself excuses if it is thought to be lawful—not from ignorance of law, but of fact. For it is one thing if union with someone is believed to be lawful because she is not known to be a blood relative, or because she is believed to be a widow; it is another if it is thought lawful because the union of blood relatives or union with women left by others is believed to be prohibited by no law. For here there is ignorance of law, which excuses no one except one who is permitted to be ignorant of law; but there there is ignorance of fact, by which anyone is truly excused. The elders of Israel were not ignorant that the nations of the promised land were to be destroyed by the Lord's command; but they were ignorant that the Gibeonites were inhabitants of the promised land. They were indeed ignorant of the fact, but they were not ignorant of the law governing the fact, and therefore, although what they swore was unlawful, nevertheless what they confirmed by oath ought lawfully to have been observed. § 1. But the statement that an unlawful oath is prohibited from being observed is not to be understood generally. For an oath, as Jerome testifies upon Jeremiah, ought to have three companions: truth, judgment, and justice. But where these are lacking, it is not an oath but perjury. From this it is given to be understood that an oath in which any of these is lacking is unlawful; nevertheless, not everyone whose oath happens to lack one of them is prohibited from observing it. § 2. For sometimes justice is lacking from an oath, as when someone after a vow of chastity takes a wife, confirming by oath that he will never depart from her. Although this is unlawful because justice is proved to be lacking from it, nevertheless by Augustine's authority

he is commanded to observe it. But if anyone contends that this is to be observed by the prerogative of marriage, not because of the religious obligation of the oath, let him notice that the Gibeonites were preserved contrary to the Lord's command solely because of that religious obligation. Therefore, since every command of the Lord is just, it is evident that justice is lacking from what is found contrary to his command. § 3. Judgment also is sometimes established to be lacking from an oath, as when someone, led by his own rashness, swears that he will eat and drink. Although this is proved unlawful through indiscreet levity, nevertheless it is not therefore commanded to be violated. § 4. Accordingly, an oath is understood to be unlawful in many ways. For it is unlawful sometimes from what is sworn, sometimes from the manner of swearing. An oath is unlawful from what is sworn when that which is sworn is vicious in its own nature, either taking away life, as adultery, homicide, and things similar to these; or not permitting life to be restored, as refusing to return to peace with an enemy or refusing mercifully to assist one in need. Because these have manifest injustice in themselves, although they are confirmed by oath, nevertheless they ought not to be observed. Accordingly, the statutes read above concerning the nonobservance of unlawful oaths are to be understood about such oaths. Therefore, whoever shall have confirmed by oath that he will do something by which either bodily or spiritual salvation is taken away, or without which either kind of salvation cannot be restored or preserved, is prohibited from preserving the pledge promised. The foregoing authorities supply examples of these when, by more salutary counsel, they do not permit unlawful vows to be observed by one who, by furnishing an oath, has promised to commit homicide, not to furnish food to his mother and brothers, to persevere in adultery, or not to return to peace with an adversary. § 5. That which is sworn is also sometimes vicious, not in its own nature but from causes coming from outside, as when someone after a vow of chastity swears to a woman that he will have her as wife. For to have a wife is not evil in itself; nevertheless, for this man it is pernicious because of his vow. Although this oath is unlawful, nevertheless he is not prohibited from observing it, but penance for the violation of his vow is commanded to be imposed upon him. § 6. An oath is unlawful from the manner of swearing when something is sworn inconsiderately and without circumspection by which neither bodily nor spiritual salvation is taken away, and without which either kind of salvation can be restored and life preserved—as when someone, compelled by his parents to receive the clerical tonsure or the habit of religious life, confirms by oath that he will do neither. Although this may seem blameworthy to some because he promised by oath that he would not perform a work of charity, nevertheless he is prohibited by no authority from observing it, because even if he never receives the clerical tonsure or the habit of religious life, he is nevertheless not for that reason any less able to merit salvation, since some persons in the lay habit are found to be most holy and chosen by God. By this example it is manifestly given to be understood that whenever someone swears that he will not do something by which a more expedient road to beatitude would be prepared for him, provided that he is able to find salvation without it, he is not prohibited from observing that oath. Hence, when we swear that we will not give someone something without which both kinds of his salvation can remain unharmed, even if some advantage would be furnished to him from it, nevertheless we are prohibited by no authority from observing the oath, provided that another way of assisting his necessities is open to us.

Question V

GRATIAN. PART I. As to what is asked in the fifth place—if what the archdeacon had sworn was lawful, whether the bishop who compelled the archdeacon to commit perjury would be guilty of perjury—it can easily be determined. For if one who consents is to be punished with a penalty equal to that of the doer, much more is one who compels proved guilty of the crime committed. Hence Pope Pius says:

C. I. One who compels another to commit perjury and the one who is compelled are both held to be perjurers.

When one who is compelled by his lord knowingly commits perjury, both are perjurers, both the lord and the soldier: the lord, because he commanded it; the soldier, because he loved his lord more than his soul. If he is free, let him do penance for forty days on bread and water and for the following seven years; if he is that lord's slave, let him do penance for three forty-day periods and the appointed fast days.

C. II. The penance of one who commits perjury in the hand of a bishop or upon a consecrated cross.

Likewise. One who commits perjury in the hand of a bishop or upon a consecrated cross is to do penance for three years; but if upon an unconsecrated cross, he is to do penance for one year. One who was compelled and, not knowing it, committed perjury, and afterwards recognizes it, is to do penance for three forty-day periods.

C. III. With what penalty one who commits perjury under compulsion of necessity is to be struck.

Likewise from the Penitential of Theodore. If anyone, having been compelled for the redemption of his life or for any cause or necessity, commits perjury, because he loved his body more than his soul, let him do penance for three forty-day periods. Others adjudge three years, one of them on bread and water.

C. IV. With what penalty one who swears falsely and causes others to swear falsely is to be struck.

Likewise Pope Gelasius. If anyone shall have perjured himself and knowingly led others into perjury, let him do penance for forty days on bread and water and for the following seven years, and let him never be without penance. And if the others were aware of it, let them do penance likewise.

C. V. One who knowingly compels another to perjury surpasses a murderer.

Likewise Augustine in the sermon on the beheading of Saint John, [that is, sermon 11 *On the Saints*]. One who provokes a man to swear and knows that he will swear falsely surpasses a murderer, because the murderer is about to kill the body, but the former the soul—indeed, two souls, both that of the one whom he provoked to swear and his own. You know that what you say is true and what he says is false, and you compel him to swear? Behold, he swears; behold, he commits perjury. What have you gained? Rather, you too have perished, who wished to be sated by his death.

C. VI. One who demands an oath from a person whom he does not know will swear falsely does not sin.

The same in the sermon on perjuries, [that is, in sermon 30 *On the Words of the Apostle*, otherwise 28]. As regards one who demands an oath, it makes a great difference whether he does not know that the other will swear falsely or knows it. For if he does not know and for that reason says, "Swear to me," so that confidence may be placed in him, it is not a sin; nevertheless, it is a human temptation. But if he knows that the man committed the deed and compels him to swear, he is a murderer. For the latter destroys himself by his perjury, but the former both placed and pressed the hand of the one killing.

C. VII. Let one who draws others into perjuries not communicate until the end of his life.

Likewise from the Council of Mâcon, [I, c. 17]. If anyone shall have been convicted of having drawn others into false testimony or perjuries, or of having solicited them by any corruption, let him indeed not communicate until the end of his life; but those who are proved to have consented to him in the perjury are thereafter to be removed from all testimony and will be marked with infamy according to the law. PART II. GRATIAN. Likewise, one who hears someone swear falsely and remains silent commits an offense. Hence Augustine says in *Questions on Leviticus*, c. 1: "The soul that shall have heard the voice of one swearing falsely, etc.":

C. VIII. To whom the falsehood that is sworn by someone is to be disclosed.

This appears to say that a man sins when someone swears falsely in his hearing and he knows that the man swears falsely but remains silent. But he knows this if he was a witness to the matter about which the oath is sworn, either by seeing it or by being privy to it—that is, if he knew it in some manner, either perceived it with his own eyes, or the very man who swears disclosed it to him. For in this way he could have been privy to it. § 1. But between fear of this sin and fear of betraying men there very often exists no small temptation. For by warning or prohibiting him we can recall one prepared for perjury from so grave a sin; but if he shall not listen and in our presence shall swear falsely concerning a matter that we know, whether he is to be disclosed, so that after being disclosed he might even incur danger of death, is a most difficult question. But because he did not express here to whom this is to be disclosed—whether to the one to whom the oath is sworn, or to some priest who not only cannot persecute him by inflicting punishment but can also pray for him—it seems to me that a person frees himself from this bond of sin if he discloses it to such persons as can benefit rather than harm the perjurer, whether by correcting him or by appeasing God for him, if the perjurer himself also applies to himself the medicine of confession. GRATIAN. Therefore, if this man who hears someone swear falsely and remains silent commits an offense, as was said above, much more is one who compels another to swear falsely guilty. PART III. § 1. It is asked concerning one who thinks that by craftiness of words he circumvents the person to whom he furnishes an oath, whether he is guilty of perjury unless he observes what he is believed to have sworn. Isidore writes thus concerning this in Book II of the *Sentences*, [c. 31].

C. IX. Concerning one who swears with craftiness of words.

By whatever artifice of words one may swear, nevertheless God, who is witness of the conscience, accepts it as the one to whom the oath is sworn understands it. Moreover, one who both takes the

name of God in vain and ensnares his neighbor by deceit becomes guilty in two ways.

C. X. One who swears falsely upon a stone is a perjurer.

Likewise from a sermon of Saint Augustine, [sermon 30 *On the Words of the Apostle*]. Behold, I say to your charity that one who swears falsely by a stone is also a perjurer. Why do I say this? Because many are deceived even in this and think that, because that by which they swear is nothing, they are not held by the crime of perjury. You are altogether a perjurer, because you swear falsely by that which you do not consider holy. If you do not consider it holy, the one to whom you swear considers it holy. For when you swear, you swear not to yourself or to the stone, but to your neighbor. You swear to a man before a stone; but is it not also before God? The stone does not hear you speaking, but God punishes you for deceiving. But that passage of Gregory in Book XXVI of the *Moralia*, [c. 7], is objected:

C. XI. Before God our words proceed not from the mouth but from the heart.

Human ears judge our words to be such as they sound outwardly. But divine judgments hear them outwardly such as they are brought forth from within. § 1. Certainly let him who explains another's intention and will by various words know that one ought to consider not the words but the will and intention, because the intention ought not to serve the words, but the words the intention. GRATIAN. Therefore, if divine judgments hear our words outwardly such as they are brought forth from within, and if intention ought not to serve words but words intention, it is evident that God does not accept an oath as the one to whom it is sworn understands it, but rather as the one who swears understands it, since our words sound to the recipient not from within but from what is uttered outwardly. § 1. Likewise, it is objected that one who swears upon a stone while thinking that he swears upon the sacrosanct Gospel is bound just as if he had sworn upon the Gospel, even though the one to whom he swears had him swear upon the stone precisely so that, by not observing what he promises, he might not be held by the guilt of perjury. § 2. Likewise, the case is objected of citizens who believe that they swear that they will obey their consuls in all things that shall have been commanded to them for the honor of their city. But lest, by refusing obedience, they be ensnared by the guilt of perjury, a document is placed beneath the hands of those about to swear in which something other than what they suppose themselves about to swear is contained—namely, that they will not divert the Po into the Nile or do something of this kind. Therefore, if, contrary to what they had believed themselves to have sworn, they should deny obedience to their consuls, would God accept that oath according to the intention of the recipient, or not rather according to the intention of the one swearing? § 3. Likewise, if an innocent person charged with adultery or theft wished to assert his innocence, but should swear that he was as free from the charges as is contained in that document which he supposes himself to have written with his own hands, whereas it is contained in it that he is guilty of the charges, would he be reckoned a perjurer by the Lord? Or could he be accused of having sworn that he had incurred the guilt of adultery or theft? No. Hence John Chrysostom also says:

C. XII. There ought to be no difference between the oath and the speech of the faithful.

The reason for this oath is that everyone who swears, swears for this purpose: that he may speak what is true. And therefore the Lord wills there to be no distance between an oath and our speech, because, just as no faithlessness ought to be in an oath, so also no lie ought to be in our words, because both perjury and lying are condemned by the penalty of divine judgment, Scripture saying: "The mouth that lies kills the soul." Therefore, whoever speaks the truth swears, because it is written: "A faithful witness will not lie."

C. XIII. Before someone swears, he has committed perjury if he prepares to swear against his conscience.

The same. One who is prepared to commit perjury appears already to be a perjurer before he commits perjury, because God judges not from works but from thoughts and from the heart. GRATIAN. From all these things it is gathered that oaths are judged by God according to the intention of the one furnishing them, not of the one receiving them. How then, according to Isidore, does God accept an oath, by whatever artifice of words one may swear, as the one to whom it is sworn understands it? But just as it is one thing to swear with crafty artifice of words and another simply to declare one's intention by swearing, so it is one thing to receive an oath made with a simple intention and another to employ craftiness in receiving it, because, just as no one is able before God to harm another person, so neither is one able to benefit another contrary to that person's intention. But God, the despiser of duplicity, considers the simple intention of each party and, on the part both of the recipient and of the one furnishing the oath, spurns and hates artifice of words. PART VI. § 1. Concerning the age of persons swearing, however, it is asked at what age anyone ought to be compelled to swear. Concerning this it is found determined as follows in the first book of the Capitularies, [c. 63]:

C. XIV. Let those who are below the age of reason not be compelled to swear.

Little children who are below the age of reason are not to be compelled to swear. And one who has once committed perjury is thereafter neither to be a witness nor to approach an oath, nor to serve as a sworn person in his own cause or another's.

C. XV. Let no one be compelled to swear before fourteen years of age.

Likewise from the Council of Elvira. Boys are not to be compelled to swear before fourteen years of age. A girl also, if, being of childish age in her father's house, she shall have bound herself by oath without his knowledge, and her father, when he hears of it, shall immediately contradict it, her vows and oaths will be void, and she will be corrected more easily.

C. XVI. On the same, and that oaths are to be furnished by those who are fasting.

Likewise Pope Cornelius. It also appears honorable that one who dares to swear upon holy things should do this while fasting, with all honorableness and fear of God, and that boys should not be compelled to swear before fourteen years of age. GRATIAN. Furthermore, there are certain times in which we are prohibited from swearing. Hence in the Council held at Saint-Médard:

C. XVII. At what times we are prohibited from swearing.

The holy synod decreed that from Septuagesima until the octave of Easter, and from the Advent of the Lord until the octave of Epiphany, and also on the fasts of the Ember Days, on the Greater Litanies, on Sundays, and on the Rogation Days, no one is to presume to swear upon the holy Gospels, except concerning concord and peacemaking. PART V. GRATIAN. Concerning the form of fidelity, and what each person owes to his lord, or conversely, it is found as follows in the letter of Bishop Fulbert:

C. XVIII. What things are to be observed in fidelity.

Having been admonished to write something concerning the form of fidelity, I have briefly noted for you from the authority of books these things that follow. One who swears fidelity to his lord ought always to keep these six things in memory: harmless, safe, honorable, useful, easy, possible. Harmless, namely, lest he cause harm to his lord concerning his lord's body. Safe, lest he cause harm to him concerning his secret or concerning the fortifications through which he can be safe. Honorable, lest he cause harm to him concerning his justice or concerning other causes that appear to pertain to his honor. Useful, lest he cause harm to him concerning his possessions. Easy or possible, lest he make difficult for him the good that his lord could easily do, or render impossible for him what was possible. It is just that the faithful man guard against these injuries. § 1. But because it is not sufficient to abstain from evil unless what is good is done, it remains that in the same six things mentioned above he faithfully furnish counsel and assistance to his lord, if he wishes to appear worthy of his benefice and to be secure concerning the fidelity that he swore. § 2. The lord also ought to render the same in return to his faithful man in all these things. If he does not do so, he will deservedly be judged to have acted in bad faith, just as the former, if he shall have been discovered either doing or consenting to their violation, is faithless and a perjurer.

[PALEA.

C. XIX. On the same.

Augustine. If any layman profanes by violating the oath that he swears to his king and lord, and afterwards shall have dealt perversely and deceitfully with his kingdom and plots against his life by some contrivance, because he perpetrates sacrilege by laying his hand upon the Lord's anointed, let him be anathema unless he shall have amended himself through a worthy satisfaction of penance, as was established by the holy synod—that is, let him leave the world, lay down arms, enter a monastery, and do penance all the days of his life. Nevertheless, at the end of his life let him receive communion with the Eucharist. § 1. But if a bishop, priest, or deacon shall have committed this crime, let him be degraded.] PART VI. GRATIAN. Accordingly, as appears from the foregoing, a lie ought neither to be uttered in simple speech nor confirmed by oath. Moreover, a lie is proved to exist not only in words but also in feigned works. Hence Ambrose says in a sermon delivered on the Sunday concerning Abraham:

C. XX. One who does not show his profession by works lies.

Beware of lying, brothers, because all who love lying are sons of the devil. § 1. A lie exists not only in false words but also in feigned works. For it is a lie to call oneself a Christian and not to do the works

of Christ. It is a lie to profess oneself a bishop, priest, or cleric and to perform things contrary to this order.

C. XXI. Whenever evil speech proceeds from our mouth.

Likewise Jerome, [on chapter 4 of the Epistle to the Ephesians]. Whenever we speak either at an inopportune time, or in an inopportune place, or not as is fitting for the hearers, so often evil speech proceeds from our mouth to the destruction of those who hear. Therefore let us consider what we say, because for every idle word we are to render an account on the day of judgment. PART VII. GRATIAN. A cleric, however, ought not to furnish an oath to a layman. Hence it is read in the Council of Reims:

C. XXII. Let a cleric not presume to swear anything to any layman.

Let no one of the ecclesiastical order presume to swear anything upon the holy Gospels to any layman, but let him say simply, with truth and purity: it is, or it is not. But if there is anything charged against him, according as those who are of the same order shall judge, let him either be corrected or clear himself. [PALEA. A cleric likewise ought not to furnish an oath to a bishop, except perhaps one to whom he commits the administration of the church. Hence Urban II says:

C. XXIII. On the same.

Let no bishop compel his clerics to swear to him, except perhaps those to whom the administration of ecclesiastical affairs shall have been committed.]

Causa XXIII

GRATIAN. Certain bishops, together with the people committed to them, fell into heresy. They began by threats and tortures to compel the Catholics dwelling round about them into heresy. When this became known, the Apostolic commanded the Catholic bishops of the surrounding regions, who had received civil jurisdiction from the emperor, to defend the Catholics from the heretics and by whatever means they could to compel the heretics to return to the truth of the faith. The bishops, receiving these apostolic commands, summoned soldiers and began to fight against the heretics openly and by ambushes. At length, after some of them had been delivered to death, others despoiled of their own or ecclesiastical property, and others confined in prison and workhouse, they were compelled to return to the unity of the Catholic faith. (Question I.) Here it is asked first whether military service is a sin. (Question II.) Second, what war is just, and how just wars were waged by the children of Israel. (Question III.) Third, whether an injury to associates is to be repelled by arms. (Question IV.) Fourth, whether vengeance is to be inflicted. (Question V.) Fifth, whether it is a sin for a judge or minister to kill the guilty. (Question VI.) Sixth, whether the evil are to be compelled to good. (Question VII.) Seventh, whether heretics are to be despoiled of their own and the church's property, and whether one who possesses things taken from heretics is said to possess another's property. (Question VIII.) Eighth, whether bishops or any clerics may, by their own authority or by command of the Apostolic or the emperor, take up arms.

Question I

GRATIAN. That military service appears alien to evangelical discipline seems capable of being proved from this: every military establishment was instituted either to repel injury or to inflict vengeance, but injury is repelled either from one's own person or from an associate, and both are prohibited by the evangelical law. For when it is said, "If anyone strikes you on one cheek, offer him the other also," and again, "Whoever compels you to go one thousand paces, go with him two thousand"; likewise, when the Apostle says to the Romans, "Do not defend yourselves, dearly beloved, but give place to wrath," what else are we prohibited from doing but repelling an injury to our own person? § 1. Likewise, when Christ said to Peter as he defended his master with a sword, "Turn your sword into its sheath; or do you think that I cannot ask my Father, and he will furnish me more than twelve thousand legions of angels?"; finally, as is read concerning blessed Andrew, when there was a gathering of the peoples to snatch him from the hands of the unjust judge and defend him from the injury of death, and he, on the contrary, teaching patience both by example and word, asked them not to impede his martyrdom—what else are we admonished to do but patiently endure injuries to our associates as well as our own, and not run to arms, but by their example prepare the mind to endure similar things? § 2. Likewise, when it is said in Proverbs, "Vengeance is mine, and I will repay, says the Lord"; likewise, when it is said in the Gospel, "Do not judge, and you will not be judged"; likewise, when the father of the household says to the servants wishing to gather the weeds, "Permit both to grow until the harvest, and then I shall say to the reapers: gather the weeds and bind them in bundles to be burned"; § 3. likewise, when that king who made a wedding for his son is said, after sending his armies—that is, the angels—to be about to destroy the murderers of the prophets and apostles, who, when called to the wedding, disdained to come by believing; likewise, when Paul the Apostle says in the Epistle to the Romans, "Do not judge one another"; likewise, "Who are you who judge another's servant? To his own lord he stands or falls. Therefore, whether we live or die, we are the Lord's. For to this end Christ died and rose again, that he might be Lord both of the living and of the dead"—in all these things what else is commanded but that vengeance upon offenders be reserved for divine judgment? Therefore, since, as was said above, military service appears to have been instituted either to repel injury or to inflict vengeance, but both are prohibited by the evangelical law, it appears that military service is a sin. Hence Gregory also says:

C. I. Carnal wars bear the figure of spiritual wars.

Unless these carnal wars bore the figure of spiritual wars, never, I think, would the books of Jewish histories have been handed down by the Apostles to be read in the churches by disciples of Christ, who came to teach peace. For how would that description of wars benefit those to whom Jesus says, "My peace I give to you, my peace I leave to you," and who through the Apostle are commanded and told, "Do not avenge yourselves, but rather receive injury and rather suffer fraud"? Hence the Apostle, knowing finally that wars were no longer to be carried on by us carnally, but that contests of the soul against spiritual adversaries were to be labored through, gives a command to the soldiers of Christ as a master of military service, saying, "Put on the armor of God, that you may be able to stand against the snares of the devil." GRATIAN. To these things the answer is thus: the precepts of patience are to be retained not so much in the display of the body as in the preparation of the heart. Hence Augustine says in the sermon concerning the centurion's servant:

C. II. The precepts of patience are to be observed by strength of mind, not by display of the body.

A just and pious man ought to be prepared patiently to sustain the malice of those whom he seeks to become good, so that the number of the good may rather increase, not so that anyone by equal malice may add himself to the number of the evil. Finally, these precepts pertain more to the preparation of the heart than to the work done openly, so that patience with benevolence may be retained in the secrecy of the mind, but outwardly that may be done which appears to benefit those toward whom we ought to will good. § 1. From this it is clearly shown that the Lord Jesus himself, the singular example of patience, when he was struck in the face, answered, "If I have spoken badly, testify concerning the evil; but if well, why do you strike me?" Accordingly, if we look to the words, he by no means fulfilled his own precept. For he did not offer the other side to the one striking him, but rather prohibited him from doing so and increasing the injury. And yet he had come prepared not only to be struck in the face, but even to be killed, crucified for those by whom he suffered these things, for whom, hanging upon the cross, he said, "Father, forgive them, because they do not know what they do." § 2. Nor does Paul the Apostle appear to have fulfilled the precept of the Lord and his master when, after being struck in the face, he said to the chief priest, "God will strike you, whitewashed wall. You sit to judge me according to the law, and contrary to the law command me to be struck?" And when those standing by said, "Do you injure the chief priest?" mocking them, he wished to remind them of what he had said, so that those who were wise might understand that at Christ's advent the whitewashed wall—that is, the hypocrisy of the Jewish priesthood—was now to be destroyed. For he said, "I did not know, brothers, that he is the chief. For it is written: You shall not curse the chief of your people," although without doubt one who had grown up among the same people and had been instructed in the law could not have failed to know that chief priest, nor could he in any way have deceived those to whom he had been so well known by saying that he did not know. Therefore, these precepts of patience are always to be retained in the preparation of the heart, and benevolence itself, lest evil be returned for evil, is always to be fulfilled in the will. § 3. Yet many things are to be done even to the unwilling, who are to be punished with a certain benevolent severity, and whose benefit rather than their will is to be consulted. For in correcting a son, however severely, paternal love is certainly never lost. Nevertheless, let what he does not will be done, and let him suffer pain who appears capable of being healed by pain even against his will. § 4. And through this, if this earthly commonwealth observes Christian precepts, even its wars will not be conducted without benevolence, but so that the vanquished may more easily be provided for in the fellowship of piety and justice. For one whose license for iniquity is taken away is vanquished to greater benefit, since nothing is more unhappy than the happiness of sinners, by which penal impunity is nourished and an evil will, as an inner enemy, is strengthened. And a little later: § 5. For if Christian discipline condemned all wars, this counsel of salvation would rather be given in the Gospel to those seeking it, that they should cast away their arms and withdraw themselves altogether from military service. But it was said to them: "Extort nothing from anyone; be content with your pay." When he commanded that their own pay ought to suffice them, he certainly did not prohibit military service.

C. III. Many can please God while bearing the arms of war.

Likewise the same to Boniface, [letter 207]. Do not suppose that no one who serves with the arms of war can please God. Among such men was holy David, to whom the Lord furnished so great a

testimony. Among such men also were very many just men of that time. Among such men was that centurion who said to the Lord, "I am not worthy that you should enter under my roof." § 1. Therefore, when you are armed for battle, consider this first: that even your bodily strength itself is a gift of God. For thus you will consider that you must not use the gift of God against the Lord. For when fidelity is promised, it is to be preserved even toward the enemy against whom war is waged; how much more toward the friend for whom one fights? Peace ought to be a matter of will, but war a matter of necessity, so that God may deliver from necessity and preserve in peace. For peace is not sought so that war may be practiced, but war is waged so that peace may be acquired. Therefore, be peaceable in waging war, so that by conquering those whom you attack you may lead them to the benefit of peace. "For blessed are the peacemakers," says the Lord, "because they will be called sons of God." But if human peace is so sweet for the temporal safety of mortals, how much sweeter is divine peace for the eternal safety of the angels? Accordingly, let necessity crush the fighting enemy, not the will. Just as violence is returned to one fighting and resisting, so mercy is already owed to one defeated or captured, especially when no disturbance of the peace is feared in him. Likewise the same against the Manichaeans, [that is, Book XXII *Against Faustus*, cc. 74 and 75]:

C. IV. What things are rightly to be blamed in war.

What is blamed in war? Is it that those who will die at some time die so that those who will live may be subdued in peace? To have blamed this belongs to the timid, not to the religious. The desire to harm, the cruelty of taking vengeance, an unappeased and implacable spirit, the savagery of rebelling, the lust for domination, and anything similar—these are the things that are rightly blamed in wars. In order that these may also be punished by right, wars themselves are very often undertaken by the good against the violence of those resisting, whether at God's command or that of some legitimate authority, when they are found in that order of human affairs in which the order itself justly constrains them either to command something of this kind or to obey in such matters. Hence neither does John command soldiers to depart from arms, and Christ admonishes that tribute be rendered to Caesar, because pay necessarily must be furnished to the soldier on account of wars. Moreover, that natural order accommodated to the peace of mortals demands that the authority and counsel for undertaking war rest with princes. § 1. But if war is waged from human cupidity, it does not harm the saints, over whom no one has power except that given from above. For there is no power except from God, whether he commands or permits it. Therefore, if a just man should serve as a soldier even under a king who is a sacrilegious man, he can rightly fight at that king's command if, preserving the order that serves peace, it is certain that what is commanded of him is not contrary to God's command, or it is not certain whether it is; so that perhaps the iniquity of commanding makes the king guilty, while the order of serving shows the soldier innocent.

C. V. Military service is not a sin.

Likewise the same in the book *On the Words of the Lord*, tractate [or sermon] 19. Military service is not an offense, but to serve as a soldier for the sake of plunder is a sin; nor is it criminal to administer the commonwealth, but to administer the commonwealth for this reason, that you may increase riches, appears condemnable. For this reason pay was established for soldiers by a certain providence, lest, while expenses are sought, a robber should range about. Likewise: § 1. The Lord himself said, "Render to God the things that are God's, and to Caesar the things that are Caesar's." Therefore,

what Caesar commands is to be borne, and what he orders is to be endured; but it becomes intolerable when exactors accumulate plunder. Likewise: § 2. "Soldiers questioned John, saying: And what shall we do? He said to them: extort nothing from anyone, nor make false accusation, but be content with your pay." Thus every man who serves ought to recognize himself. For Scripture speaks not only of those soldiers who are occupied in armed service, but whoever employs the belt of his service is enrolled as a soldier of his dignity; and therefore this sentence can be spoken, for example, to soldiers, protectors, and all rulers. Whoever receives pay publicly decreed for him, if he seeks more, is condemned by John's sentence as a false accuser and extortioner.

C. VI. Wars waged so that the evil may be restrained and the good assisted are peaceful.

Likewise the same, *On Diverse Observances of the Church*. Among true worshipers of God, even wars themselves are peaceful when they are waged not from cupidity or cruelty but from zeal for peace, so that the evil may be restrained and the good assisted.

C. VII. The highest praise of military service is to furnish obedience to the interests of the commonwealth.

Likewise Gregory to all the soldiers at Naples, [Book XII, letter 24]. Among other good merits, the highest praise of military service is this: to furnish obedience to the interests of the commonwealth and to obey whatever shall have been advantageously commanded to it, just as we have learned that your devotion has now done. It obeyed our letters by which we appointed the magnificent man Constantius the tribune to preside over the guardianship of the city, and it demonstrated the fitting obedience of military devotion. Hence we have taken care to admonish you by the present writing that you ought, as you have done, to furnish every obedience to the aforesaid magnificent man, the tribune, for the interest of the most serene lords or the preservation of the city, so that through the vigilance and solicitude of the present time you may augment whatever is recognized to have been well conducted by you thus far. GRATIAN. From all these things it is gathered that military service is not a sin, and that the precepts of patience are to be observed in the preparation of the heart, not in display of the body.

Question II

GRATIAN. As to what is asked—what war is just—Isidore says in Book XVIII of the *Etymologies*:

C. I. What a just war is.

A war is just when it is waged by edict for the recovery of property or for the purpose of repelling men. § 1. A judge is so called because he declares right to the people, or because he decides by right. To decide by right is to judge justly. For he is not a judge if justice is not in him.

C. II. It makes no difference to justice whether someone fights openly or by ambushes.

Likewise Augustine in the book of *Questions*, [VI, question 10]. The Lord our God commands Joshua son of Nun to establish ambushes behind him—that is, warriors lying in ambush to ambush the enemies. From this we are admonished that this is not done unjustly by those who wage a just war,

so that above all the just man should consider nothing in these matters except that he undertake a war which it is lawful for him to wage. For it is not lawful for all. But when he has undertaken a just war, whether he fights openly or by ambushes makes no difference to justice. Just wars are customarily defined as those that avenge injuries, as when some nation or state that is to be attacked in war has neglected either to punish what was wickedly done by its own people or to restore what was taken away through injuries. But that kind of war also is undoubtedly just which God commands, who knows what ought to be done to each person; in such a war the commander of the army or the people itself is to be judged not so much the author of the war as its minister. GRATIAN. Therefore, since a just war is one waged by edict or one by which injuries are avenged, it is asked how just wars were waged by the children of Israel. Augustine writes thus concerning these in *Questions on Numbers*, [question 44, on c. 20]:

C. III. Harmless passage was denied to the children of Israel, and therefore just wars were waged.

It is certainly to be noted how just wars were waged by the children of Israel against the Amorites. For harmless passage was denied, which by the most equitable right of human fellowship ought to have lain open.

Question III

GRATIAN. That an injury to associates is not to be repelled by arms is proved by examples and authorities. For when the Lord was sought by Herod in order to be killed, he did not seek for himself the protection of arms, although by a hidden impulse he could have turned the hands of the Jews against him, but, fleeing into Egypt, he lay hidden there for seven years. Thus also, when he was assailed with stones by the Jews, he hid himself and went out of the temple. Thus also, when he was led to the cross, he was unwilling to stir up against the elders of the Jews the crowd that had recently gone out to meet him and had received him with palms and praises. Thus also, when questioned by Pilate whether he was a king, he said, "My kingdom is not of this world. For if it were of this world, my servants certainly would fight so that I should not be handed over to the Jews," indicating that those belong to the kingdom of this world who strive to protect themselves from impending injury by the aid of human strength, not by divine protection. Likewise, when he said to his disciples, "If they persecute you in one city, flee into another," he taught that flight, not arms, was to be opposed to persecutors. § 1. Likewise, as is read in Isaiah, Egypt was devastated by Nebuchadnezzar because it promised aid of protection and defense to the children of Israel against the Assyrians and Chaldeans. Hence it was said: "The king of Egypt is a staff of reed; if anyone leans upon it, it will break and pierce the hand of the one leaning." The Jews themselves also were led away captive because they placed hope of their liberation not in God alone but also in man. Thus also it is read of the first believers that they received with joy the plundering of their goods, not seeking for themselves the patronage of others, but rejoicing because they were found worthy to suffer insult for the name of Jesus. Thus also the Apostle in the First Epistle persuades the Corinthians to endure injury and fraud patiently rather than scandalize their brothers by seeking recovery. Thus he judges that one ought to abstain from things offered to idols and from any food rather than eat with scandal to the brothers. Thus he also abstains from expenses lest he furnish any stumbling block to the Gospel of Christ. Therefore, since one who is restrained by arms from inflicting injury is no less scandalized than one

from whom things taken are demanded back before a judge, it is evident that the aid of arms is not to be sought for repelling injury. But what is not to be sought ought not by right to be furnished. § 2. Yet many things are rightly furnished that nevertheless are not by right sought. For a good man would not rightly seek vengeance for an injury, because he would return evil for evil; yet a judge would rightly inflict it and would return nothing but good for evil. Hence Augustine says in the exposition of Psalm 108:

C. I. How many differences of requital there are.

There are six differences: to return good things for evil things, and not to return evil things for evil things—these belong to the good, and the former is better. Not to return good things for good things, and to return evil things for good things—these two belong to the evil, and the latter is worse. To return good things for good things, and evil things for evil things—these two belong to those in the middle: the former is near to the good, which Christ does not condemn but says that more is required, because even the gentiles do this; the latter is near to the evil, yet it is fitting also for the good. Hence the law also established a measure of vengeance: "An eye for an eye." This, if it can be so called, is the justice of the unjust—not because the vengeance that the law established is inequitable, but because the desire to take vengeance is vicious; and it pertains more to a judge to decree this among men than to a good man to seek it for himself. For the latter would return evil for evil, but the judge would not; rather, from delight in justice he would return what is just for what is unjust, which is good for evil, as God the judge also does. GRATIAN. Likewise, what belongs to one is demanded unjustly from someone captured unjustly, but it is justly offered for the redemption of life. Likewise, sacred vessels are demanded unjustly by some barbarian, but they are justly furnished for the redemption of captives. Thus also, the repelling of injury, although it is sought unjustly, is nevertheless furnished justly, although the seeking itself is proved not altogether unjust. § 1. For it is one thing to repel injury so that one may be permitted to live pleasurably, and another so that one may freely devote oneself to the benefit of others. And thus it is one thing to seek support from a man as from a minister of justice, so that through his ministry the evil will of adversaries may lack effect and the will of the good may obtain effect through his support; it is another to transfer one's hope from God to man, so that adversities inflicted by God for correction of life may be repelled by human aid without any preceding correction. So did the Israelites, who thought that by the support of the Egyptians they could escape the captivity impending over them without penance for their past life, not recalling to memory: "Give us aid from tribulation, because the salvation of man is vain"; and likewise, "These in chariots and these on horses, but we shall invoke the name of our God." Therefore, to seek or furnish assistance in tribulation so that someone may live pleasurably in crime is condemnable. But to seek or furnish help so that the evil may be deprived of the opportunity to offend, so that the church may obtain peace, or so that someone may be preserved for the benefit of many is useful and honorable; but to dissemble is most grave. Hence it is read of Paul that, when certain Jews had sworn that they would not eat bread unless they killed him, he sought soldiers from the praetor by whose protection he might be preserved unharmed from the injury of the Jews, intending to live not for his own pleasure but for the benefit of all. Hence in the Gospel the hireling is one who sees the wolf coming, leaves the sheep, and flees. § 2. Hence also the church is admonished to seek aid from the emperor for its defense. Thus Augustine says to Boniface, [letter 50]:

C. II. The church ought to seek aid from the emperor.

Maximian, Bishop of Vaga, sought aid from the Christian emperor against the enemies of the church, not so much for the purpose of avenging himself as of protecting the church entrusted to him. If he had omitted this, his patience would not have been praiseworthy, but his negligence would deservedly have been blameworthy. For neither did the Apostle Paul provide for his own transitory life, but for the church of God, when he caused the plan of those who had conspired to kill him to be disclosed to the tribune. Hence it happened that an armed soldier escorted him to the place to which he was to be brought, lest he lie open to their ambushes.

C. III. Catholics can seek defense from the ordained powers against heretics.

Likewise Augustine to Emeritus, [letter 164]. Our people seek vengeance from the ordained powers against the unlawful and private acts of violence of your people—which even you there who commit such things lament and bewail—not because they persecute them, but because they defend themselves.

C. IV. How great the difference is between the persecution of heretics and that of Catholics.

Likewise the same against Petilian, [Book II, c. 88]. For the members of Christ they rage against you and resist you, whoever in the church are of that spirit in which Peter then was when he drew the sword for Christ's name. But there is a great difference between your persecution and theirs. You are like the priest's servant, because, serving your princes, you are armed against the Catholic Church—that is, against the body of Christ. But they are such as Peter then was, who fought even bodily for Christ's body—that is, for the church.

C. V. One who protects his homeland from barbarians by war is full of justice.

Likewise Ambrose in Book I of *On Duties*, [c. 27]. Courage that protects the homeland from barbarians in war, or defends the weak at home, or protects associates from robbers, is full of justice.

C. VI. One who disables the limbs of a robber or pirate benefits him.

Likewise Jerome upon Zephaniah, [on c. 1]. If anyone enervates the strength of a robber or pirate and renders his limbs weak, their weakness benefits them. For their disabled limbs, which they formerly did not use well, will cease from evil work.

C. VII. One who does not repel an injury from an associate is like the one who inflicts it.

Likewise Ambrose in Book I of *On Duties*, [c. 36]. The law of courage consists not in inflicting injury but in repelling it. For one who does not repel an injury from an associate when he can is as much at fault as the one who inflicts it. Hence holy Moses first began from this the trials of his feeble courage. For when he had seen a Hebrew receiving injury from an Egyptian, he defended him in such a way that he struck down the Egyptian and hid him in the sand. Solomon also says: "Rescue him who is led to death."

C. VIII. One who ceases to oppose the evil favors their impiety.

Likewise Anastasius and Damasus. One who can oppose and disturb the perverse and does not do so is nothing other than a favorer of their impiety. Nor is one free from the scruple of secret association who ceases to oppose a manifest crime.

C. IX. Those who contemn divine commands are to be restrained by severe punishments.

Likewise Callistus, [letter 2 to the bishops of Gaul]. It is just that those who contemn divine commands and are disobedient to paternal injunctions be corrected by more severe punishments, so that others may fear to commit such things, God may rejoice in fraternal concord, and all may receive an example of severity and goodness. For if—which may it not happen—we neglect ecclesiastical solicitude and vigor, idleness destroys discipline, and the souls of the faithful will assuredly be harmed.

C. X. Emperors, with the provision of the bishops, ought to undertake the defense of the church against the power of the rich.

Likewise from the Fifth Council of Carthage, [c. 9]. It is just that this be sought from all emperors because of the affliction of the poor, by whose troubles the church is wearied without interruption: that defenders be delegated to them against the powers of the rich, with the provision of the bishops. GRATIAN. Behold, sometimes the perverse are to be opposed, and an injury to associates is to be repelled by arms, so that both the opportunity to offend, having been taken from the evil, may benefit them, and the desired opportunity of freely providing for the church may be ministered to the good. One who does not do this consents. Hence Augustine says on Psalm 81:

C. XI. Those who do not free persons whom they can free from the deed are not immune from the crime.

The Prophet shows that those who permitted the rulers to kill Christ are not immune from the crime, since they were feared because of their multitude and could free the rulers from the deed and themselves from consent. One who ceases to oppose when he can consents.

Question IV

GRATIAN. PART I. That vengeance is not to be inflicted is proved in many ways. For the evil are to be tolerated, not cast away; struck by rebuke, not expelled bodily. Hence Augustine says in the book *On the Words of the Lord*, [sermon 18]:

C. I. How the evil are to be tolerated, and how one is to withdraw from them.

The evil are indeed to be tolerated for the sake of peace, nor is one to withdraw from them bodily; but to depart spiritually is to do what pertains to the correction of the evil, insofar as is permitted according to each person's rank, while preserving peace. To be displeased is not to touch. For the prophets who said this did not abandon their people, but lived among those whom they rebuked, entered one temple with them, and celebrated the same sacraments. Therefore, this is to depart: not to spare with the mouth. This is not to touch the unclean: not to consent with the will.

C. II. That the evil are to be tolerated by the good.

The same. You who are good, tolerate the evil man. For Christ also tolerated Judas, although he knew him to be a thief, sent him to preach, and gave him the Eucharist with the others.

C. III. The evil are to be tolerated for the peace of the church.

The same upon John, [tractate 50, on c. 12]. What, therefore, brothers, did our Lord Jesus Christ wish to admonish his church when he willed to have one lost man among twelve, except that we should tolerate the evil lest we divide the body of Christ? Behold, Judas is among the saints; behold, Judas is a thief and, lest you dispute it, a thief and a sacrilegious man—not just any kind of thief, but a thief of the Lord's purses, of sacred things. Thus crimes are distinguished in a thief between theft of any kind and embezzlement—for theft from the commonwealth is called embezzlement, and theft of private property is not judged in the same way as that of public property. How much more severely is the sacrilegious thief to be judged, since this is to take not from just anywhere, but from the church? One who steals something from the church is compared to Judas the betrayer.

C. IV. On the same.

The same, [sermon 18 *On the Words of the Lord*]. Behold, they say, the Prophet says: "Withdraw; depart from there, and do not touch the unclean." How, then, shall we tolerate the evil for the sake of peace, when we are commanded to depart and withdraw from them lest we touch the unclean? We understand that withdrawal spiritually; they understand it bodily. For I too cry out with the Prophet. We are equal vessels; God uses us in his dispensation toward you. We cry out and say to you: withdraw and depart from there, and do not touch the unclean—but by contact of the heart, not of the body. For what is it to touch the unclean except to consent to sins? But what is it to depart from there except to do what pertains to the correction of the evil, insofar as it can be done according to the rank and person of each, while preserving peace? And a little later: § 1. Therefore, my brothers, however many you have among you who are still weighed down by love of the world—the avaricious, perjurers, adulterers, spectators of trifles, consulters of astrologers, fanatics, augurs, soothsayers, drunkards, and the luxurious—whatever evil persons you know to be among you, condemn them insofar as you can, so that you may withdraw in heart; reprove them, so that you may depart from there; and do not consent, so that you may not touch the unclean.

C. V. One who corrects what he can or excludes from himself what he cannot correct is peaceable.

The same in Book II *Against Parmenian*, c. 1. Whoever either corrects by reproving what he can, or excludes while preserving the bond of peace what he cannot correct, or equitably condemns and steadfastly supports what he cannot exclude while preserving the bond of peace, is peaceable and is altogether free, completely secure, and entirely separate from that curse in which Scripture says, "Woe to those who call what is wicked good, and what is good wicked." § 1. How, says Parmenian, will you be able to remain uncorrupted when you associate with the corrupt?

C. VI. What it is to associate with the evil.

The same, [continuing in the same chapter]. Thus, plainly, one is associated—that is, if he commits some evil with them or favors them when they commit it. But if he does neither, he is associated in

no way. Moreover, if he adds a third thing, that he not be sluggish in punishing but either, as a just man, rebuke in mercy and reprove, or even, if he bears that office and the rationale of preserving peace admits it, reprove those sinning before all so that the others may fear, and let him also be removed either from some rank of honor or even from communion in the sacraments; and if he does all these things with love for correcting, not with the hatred of persecuting, he has fulfilled the fullest duty not only of the purest innocence but also of the most diligent severity. But where the other things are impeded, those two, always retained, preserve him uncorrupted and chaste: that he neither do evil nor approve it when done.

C. VII. The sins of others in the church do not prejudice anyone.

The same in the conciliar letter to the Donatists. If anyone shall have been separated from the Catholic Church, however praiseworthily he may think that he lives, by this crime alone—that he is severed from Christianity—he will not have life, but the wrath of God remains upon him. But whoever shall have lived well in this holy church is in no way prejudiced by the sins of others, because in it each will bear his own burden, as the Apostle says. § 1. Therefore, communion with the evil does not stain anyone through participation in the sacraments, but consent to their deeds does. For if anyone does not consent to them in evil deeds, the evil man bears his own case and does not prejudice the other, whom he does not have as a partner in crime through consent to the evil work.

C. VIII. An evil man does not stain you if you do not consent to him but reprove him.

The same in a sermon [18] *On the Words of the Gospel*. Always separate yourselves from the evil in heart; for a time, cautiously be joined to them in body. § 6. An evil man does not stain you in two ways: if you do not consent, and if you reprove him. This is not to communicate: not to consent; for communication occurs when a partnership of will or approval is joined to his deed. § 2. Therefore, neither consent to the evil so as to approve them, nor be negligent so as not to reprove them, nor be proud so as to reprove them insultingly.

C. IX. To touch the unclean is to consent to sins.

Likewise in the same. Withdraw; depart from there, and do not touch the unclean—but by contact of the heart, not of the body. For what is it to touch the unclean except to consent to sins? What is it to depart from there except to do what pertains to their correction, insofar as it can be done according to the rank and person of each, while preserving peace? Were you displeased that someone sinned? You did not touch the unclean. Did you reprove, rebuke, admonish, and even apply, if the matter requires it, fitting discipline that does not violate unity? You departed from there. § 1. Moses cried these things; Isaiah cried them; Jeremiah cried them; Ezekiel cried them. Let us see whether they abandoned the people of God and transferred themselves to other nations. How many things, and how vehemently, did Jeremiah speak in rebuke against the sinners and criminals of the people? Yet he was among them, entered one temple with them, celebrated the same sacraments, and lived in the same congregation of criminal men; but by crying out he departed from there. This is to depart from there; this is not to touch the unclean: both not to consent with the will and not to spare with the mouth.

C. X. Deeds of the guilty that cannot be proved to the innocent or believed by them do not stain the innocent.

The same in letter [48] to Vincentius. How great a crime it is to be separated from the communion of these innocent persons! For even deeds of the guilty that cannot be demonstrated to the innocent or believed by the innocent do not defile anyone if, for the sake of the innocent, they are tolerated even after becoming known. For the good are not to be abandoned on account of the evil, but the evil are to be tolerated on account of the good, just as the Prophets tolerated those against whom they said so many things and did not leave communion in the sacraments of that people; just as the Lord himself tolerated the guilty Judas until his deserved end and permitted him to share the sacred supper with the innocent; just as the Apostles tolerated those who proclaimed Christ through envy, which is a vice of the devil himself.

C. XI. Evil persons whom the church receives and does not expel are to be tolerated by the good.

The same in Book I *On the One Baptism*. Perhaps among the people of God there stands beside you an avaricious man, a robber, one gaping after the property of others, whom you know to be such; and he is faithful, or rather is called faithful. You cannot expel him from the church; you have no access by which to correct him through chastising and rebuking him; he is about to approach the altar with you. Do not fear: each will bear his own burden. Likewise: § 1. How, you ask, could I bear one whom I know to be evil? Would it not be better that you bear him than carry yourself outside? Behold how you could bear him: attend to the Apostle saying, "Each will bear his own burden." Let that sentence free you. For you would not share avarice with him, but you would share Christ's table with him. And how would it harm you if you shared Christ's table with him? The Apostle says: "For one who eats and drinks unworthily eats and drinks judgment to himself"—to himself, not to you. Certainly, if you are a judge, if you have received the power of judging by ecclesiastical rule, if he is accused before you, if he is convicted by true documents and witnesses, restrain, rebuke, excommunicate, degrade him. GRATIAN. There is also another distinction concerning those to be tolerated and those to be avoided, which may be gathered from the words of Augustine, who says, [sermon 49 *On the Words of the Lord*]:

C. XII. The shepherd is to be loved, the hireling tolerated, the robber avoided.

The Lord spoke of three persons in the Gospel—and we ought to investigate them—the shepherd, the hireling, and the thief. He said that the shepherd lays down his life for the sheep and enters through the door. He said that the thief and robber climbs up by another way. He said that the hireling, if he sees the wolf or even the thief, flees because he has no care for the sheep; for he is a hireling, not a shepherd. The one who is a shepherd enters through the door; the one who is a thief climbs up by another way; the one who, on seeing those who wish to take away the sheep, fears and flees is a hireling, and he has no care for the sheep, for he is a hireling. If we find these three persons, your holiness finds whom you should love, whom you should tolerate, and whom you should avoid. The shepherd is to be loved, the hireling tolerated, the robber avoided. GRATIAN. Behold, the evil are to be tolerated and punished not with bodily but with spiritual vengeance. Hence, when the disciples, not having been received by the Samaritans, wished to bring down fire from heaven upon them, saying to the master, "Do you wish us to say that fire should descend from heaven and

consume them?" they heard, "You do not know of what spirit you are." Likewise: "Everyone who takes the sword will perish by the sword."

C. XIII. The spiritual man does not persecute the carnal, but conversely.

Hence Jerome also says, [in the commentary on the Epistle to the Galatians, c. 4]. He who was born according to the flesh persecuted the spiritual man; but the spiritual man never persecutes the carnal, but forgives him as an uncultivated brother. He knows that the other can make progress with time; and if at any time he shall have seen the son of the Egyptian woman growing angry, he will remember the one Father who created both the oxen and the gnat, and who willed that in a great house there should be not only vessels of gold and silver but also wooden and earthen vessels.

C. XIV. The good can never be separated entirely from the evil in this life.

Likewise Augustine in Book [IV] *On Baptism*, [c. 12]. How great a swelling of arrogance it is, how great a forgetfulness of humility and gentleness, and how great a boast of arrogance, that someone should believe himself able to do what the Lord did not grant even to the Apostles—namely, that he should think himself able to distinguish the weeds from the wheat.

C. XV. The present church receives the good and the evil together.

Likewise Gregory, [homily 38 on the Gospels]. This life, which is situated between heaven and hell, just as it subsists in the middle, so receives in common the citizens of both parts; nevertheless, the holy church receives them without distinction and afterwards will distinguish them at their departure. Therefore, if you are good, so long as you subsist in this life, tolerate the evil with equanimity. For whoever does not tolerate the evil is by his intolerance a witness against himself that he is not good. For he refuses to be Abel whom Cain's malice does not exercise. PART II. GRATIAN. From all these things it is gathered that vengeance upon the evil is to be reserved to God, and that they are not to be punished bodily but invited to correction by frequent admonition and the benefit of charity. Hence Christ says in the Gospel: "You have heard that it was said in the law"—which manner of vengeance the law established—"An eye for an eye, a tooth for a tooth." But I, taking away this reciprocity and inviting you to gentleness and the perfection of charity, say to you: "Do not resist evil, but love your enemies; do good to those who hate you, so that you may be sons of your Father, who makes his sun rise upon the good and the evil and rains upon the just and the unjust." Hence Paul says: "If your enemy is hungry, feed him; if he thirsts, give him drink." Moreover, every unjust man is an enemy of the good, for every friend of this world is an enemy of God. But an enemy of God is an enemy of goodness and justice, and on this account he cannot love a lover of justice and goodness. Therefore, since we are commanded to love our enemies or do good to them and furnish them food and drink, we are prohibited from persecuting and punishing our enemies. § 1. For in the law of the Old Testament a bodily penalty was established, but in the law of the Gospel pardon through penance is promised to every sinner. Hence the former began from terror, saying, "I am the Lord, a jealous God, visiting the sins of the fathers upon the sons unto the third and fourth generation." But the latter began from the gentleness of meekness and mercy, saying thus: "Blessed are the poor in spirit; blessed are the meek; blessed are the merciful, because they shall obtain mercy." In the former it was said, "One who does this or that shall die the death." In the latter it is said, "I rejoice over one sinner doing penance more than over ninety-nine just persons who do not need penance." Likewise: "I came

not to call the just but sinners." Likewise: "Be merciful, as your Father also is merciful." The beginning of the preaching of our Savior and of his herald also invited sinners to penance. For each began thus: "Do penance, for the kingdom of heaven will draw near." Thus also in the Acts of the Apostles, when the Jews, pierced concerning the crime of Christ's death, said to Peter, "What shall we do, men and brothers?" Peter is read to have answered them, "Do penance, and let each one of you be baptized." And, to speak universally, in the law that untutored people was compelled by servile fear of penalties; hence it also received the law as a pedagogue. But in the Gospel the free and adult people of grace is invited to the observance of divine service by filial love and certainty of inheritance. Hence, when certain persons preached that the law, as though restraining, was to be kept together with grace, the Apostle said, "For you have not received the spirit of servitude again in fear, but you have received the spirit of adoption as sons, in which we cry: Abba, Father." § 2. Hence Gregory also says in the exposition of the Gospel: "The kingdom of heaven was made like a man who was a king and made a wedding for his son."

C. XVI. Under the law each person was permitted to love a friend and hate an enemy.

Since it is written in the law, "You shall love your friend and hold your enemy in hatred," license had then been granted to the just to restrain the adversaries of God and of themselves with as much strength as they could, and to strike them by right of the sword. This is undoubtedly restrained in the New Testament, when Truth himself preaches, saying, "Love your enemies; do good to those who hate you." Therefore, what is signified by the bulls except the fathers of the Old Testament? For when, by permission of the law, they had received authority to strike their adversaries with the requital of hatred, what else were they, so to speak, but bulls that struck their enemies with the horn of bodily strength? But what is figured by the fattened animals except the fathers of the New Testament? For when they receive the grace of inner richness, rising from earthly desires, as though by the wing of contemplation they raise themselves to the heights. GRATIAN. To these things the answer is thus: There are certain things that are to be reproved only by salutary admonition and not punished with bodily scourges; but vengeance for them is to be reserved only to divine judgment when, namely, we cannot exercise discipline upon the offenders, either because they are not under our jurisdiction or because their crimes, although known to us, nevertheless cannot be proved by manifest evidence. § 1. Concerning those who are not under our jurisdiction, the Apostle says in the First Epistle to the Corinthians: "For what does it pertain to me to judge those who are outside? For the Lord will judge them." Augustine, expounding this, says:

C. XVII. Conversations and banquets with unbelievers are not to be avoided.

We cannot gain unbelievers for Christ if we avoid conversation and a banquet with them. Hence the Lord also ate and drank with publicans and sinners. But in those who are within—that is, the faithful—the putrefaction is to be cut away. GRATIAN. Hence also, when the Prophet says, "The Lord executes judgment for all who suffer injury," Augustine added by way of exposition: "from those who are not under his jurisdiction, upon whom discipline cannot be exercised." § 1. Likewise, when a multitude is involved in crime and the evils cannot be punished while preserving the peace of the church, they are rather to be tolerated than punished with the peace of the church violated. Hence Augustine says, [in the book *On Faith and Works*, cc. 4 and 5]:

C. XVIII. Certain evils are to be punished and certain ones tolerated.

Some persons, when they have perceived that the mingling of the good and the evil in the church has been demonstrated or foretold, and have learned the precepts of patience—which render us most steadfast, so that even if weeds should be seen in the church, nevertheless neither our faith nor our charity is impeded, and because we discern that weeds are in the church we do not therefore ourselves withdraw from the church—think that ecclesiastical discipline is to be abandoned. They attribute to prelates a certain most perverse security, so that nothing pertains to them except to say what is to be avoided and what is to be done, but not to care what each person may do. But we judge that it pertains to sound doctrine to moderate life and judgment by both sets of testimonies, so that we tolerate dogs in the church for the sake of the church's peace, but do not give what is holy to dogs where the church's peace is secure. But when, through the negligence of prelates, or through some excusable necessity, or through hidden intrusions, we find in the church evil persons whom ecclesiastical discipline cannot correct or restrain, then—lest an impious and pernicious presumption rise in our heart by which we judge that we are to be separated from them so that we may not be defiled by their sins, and thus attempt to draw after us, as though pure and holy, disciples separated from the structure of unity as though from association with the evil—let those similitudes from the Scriptures, divine oracles, and most certain examples come to mind by which it has been demonstrated and pronounced that the evil, mingled with the good in the church until the end of the age and the time of future judgment, are to be tolerated, and will harm nothing in the good who do not consent to their deeds while remaining in the unity and participation of the sacraments. § 1. But when those by whom the church is governed possess, with peace preserved, the power to exercise discipline against the wicked or criminal, then again let us sleep through neither indifference nor sloth, but let us be roused by the goads of the precepts that pertain to severity of restraint, so that, directing our steps upon the way of the Lord from both sets of testimonies, with him as leader and helper, we may neither grow torpid in the name of patience nor rage under the pretext of diligence.

C. XIX. Hidden offenses are to be punished more lightly, but manifest offenses more severely by the church.

The same against the letter of Parmenian, [Book III, c. 2]. When any one of the brothers and Christians established within the fellowship of the church shall have been detected in some such sin that he is held worthy of anathema, let this be done where there is no danger of schism. Below: § 1. When anyone's crime is known and appears execrable to all, so that it has either no defenders at all or not such defenders through whom a schism could occur, let the severity of discipline not sleep. PART III. GRATIAN. There is also another cause by which correction with words or blows appears useless or superfluous. For those predestined to life are changed without correction, as Peter, whom the Lord, looking upon him while no one reproved him, moved to tears. Those foreknown for death become worse amid scourges, as Pharaoh did. Therefore, these things are found superfluous for the good and useless for those to be condemned. To these things the answer is thus by the authority of Gregory and Augustine:

C. XX. Just as one must not cease from prayer, so neither from correction.

Just as one must not cease from prayer for those whom we wish to be corrected, even though, when no man prayed for Peter, the Lord looked upon him and caused him to weep for his sin, so correction

is not to be neglected, although God makes those whom he wills corrected without correction. A man then profits from correction when he who causes those whom he wills to profit even without correction has mercy and assists. Likewise in the *Dialogues*, [Book I, c. 8]:

C. XXI. Only the predestined are saved, which nevertheless they merit through their labor in petitioning.

Things that have not been predestined can by no means be obtained. But those things that holy men effect by praying have been so predestined that they are obtained by prayers. For even the predestination of the everlasting kingdom itself has been so arranged by almighty God that the elect reach it through labor, so that by petitioning they may merit to receive what almighty God arranged before the ages to give them.

[C. XXII.]

Likewise Augustine, [in the book *On Predestination and Grace*, c. 15]. Nebuchadnezzar merited fruitful penance. Did he not repent after he had been scourged following innumerable impieties, and receive again the kingdom that he had lost? But was not Pharaoh rendered harder by the very scourges and did he not perish? Let the person who with a wise heart passes judgment upon the exceedingly deep divine counsel render me a reason why a medicine compounded by one physician availed for one man's destruction and for the other's salvation, unless because the good fragrance of Christ is for some a fragrance of life unto life and for others a fragrance of death unto death. As regards nature, both were men. As regards dignity, both were kings. As regards the cause, both possessed God's people captive. As regards the penalty, both were mercifully admonished by scourges. What, therefore, made their ends different, except that one, feeling the hand of God, groaned in remembrance of his own iniquity, while the other by free choice fought against the most merciful truth of God?

[C. XXIII.] The same.

God would never render destruction to vessels of wrath if man were not found to have voluntary sin, because God would not justly inflict wrath upon a sinning man if man had fallen into fault by God's predestination. The same: § 1. It is said most foolishly that God's predestination operates in all persons either toward good or toward evil, so that a certain necessity appears to impel men toward either, since in good things the will is to be understood not without grace, but in evil things the will is to be understood without grace. § 2. But when we read that some persons have either been handed over by God to their own desires, or hardened, or abandoned, we profess that they themselves merited this by their great sins, because such crimes of theirs preceded that they owed themselves the penalty by which even their punishment would be turned into guilt for them. And thus we neither complain of God's judgment by which he abandons those who deserve to be abandoned, and we give thanks for his mercy by which he frees those who do not deserve to be freed. § 3. Accordingly, he did not withdraw the powers of obedience from anyone because he did not predestine him, but he did not predestine him because he foresaw that he would withdraw from obedience itself. § 4. God's predestination also is always toward good; it knows that sin committed solely by man's will is either to be forgiven with praise of mercy or punished with praise of justice. But in our evil works only God's foreknowledge is to be understood, because, just as he foreknew and predestined the things that he himself did and gave us the power to do, so he only foreknew, but did

not also predestine, the things that he neither did himself nor exacted that we do. § 5. But those concerning whom it is said, "They went out from us, but they were not of us. For if they had been of us, they certainly would have remained with us," went out by their will and fell by their will; and because they were foreknown as going to fall, they were not predestined. But they would have been predestined if they were going to return and remain in holiness and truth. And through this, God's predestination is for many a cause of standing, but for no one a cause of falling. GRATIAN. Therefore, divine predestination or foreknowledge does not create the necessity of correction or hardening, since the good are corrected through grace and the evil perish by free choice. For neither, because God's predestination or foreknowledge cannot be deceived, do the things that are predestined or foreknown happen necessarily, just as neither are the things that will be necessarily predestined or foreknown; rather, it is because good things cannot happen without his grace, nor evil things outside his knowledge. § 1. Therefore, although it is fittingly said, "If these things are predestined or foreknown, they will happen necessarily," nevertheless it is not therefore absolutely true that the things predestined or foreknown will happen necessarily, because here necessity is referred to the event of things, but there to the gaze of divine foreknowledge. Hence Augustine says: "There are," he says, "two necessities: one simple, as, for example, it is necessary that all men are mortal; the other conditional, as, if someone knows that a person is walking, it is necessary that he is walking. For what anyone knows cannot be otherwise than it is known. But this necessity by no means brings that simple necessity with it. For its own nature does not create this necessity, but the addition of a condition. For no necessity compels one who walks by his will to proceed, although at the time when he walks it is necessary that he is proceeding. In the same manner, therefore, if present providence sees something, it is necessary that it be, even though it has no necessity of nature. Yet foreknowledge beholds those future things that proceed from freedom of choice. Therefore, when referred to the divine gaze, these things become necessary through the disposition of divine knowledge. But considered in themselves, they do not abandon the absolute freedom of their own nature. Therefore, all things that God foreknows will be will undoubtedly happen; but certain of them proceed from free choice, and although they happen, nevertheless in coming to exist they do not lose their own nature by which, before they happened, they could also not have happened." § 2. By all these things our evils are ascribed to free choice, although elsewhere they are ascribed to divine indignation. Hence Gregory says: "When heavenly indignation moves itself, so to speak, from the marrow, human opinion does not move it away, nor does anyone's supplication usefully oppose it when once God, becoming angry from within, determines something. Hence it is that Moses, who wiped away the guilt of the whole people before the Lord by his prayers and, when he offered himself as an obstacle, appeased the force of divine wrath, upon coming to the rock of Horeb and distrusting concerning the furnishing of water, could not enter the promised land when the Lord was angry." § 3. Likewise Augustine: "Concerning the Tyrians and Sidonians, what else can we say except that it was not given to them to believe, whom Truth himself teaches would have believed if they had seen such signs of powers as were performed among those who did not believe? But why this was denied to them, let those who bring false accusation say, if they can, and let them show why the Lord performed among those whom they would not benefit wonders that would have benefited those among whom he did not perform them. For our part, if by reason of the deed we cannot penetrate the depth of his judgment, nevertheless we know most manifestly both that what he said is true and what he did is just, and that not only the Tyrians and Sidonians but even Chorazin

and Bethsaida could have been converted and made faithful from unfaithful if the Lord had willed to work this in them. For that which Truth says can appear false to no one: 'No one can come to me unless it shall have been given to him by my Father.' Likewise, he who through the Prophet promised the Jewish people, 'Behold, I shall hedge your ways with thorns and fortify them with squared stones,' that is, 'I shall take from you the opportunity to sin,' had said the same through the Psalmist concerning those to be condemned: 'Let their ways become darkness and slippery ground, and the angel of the Lord pursuing them.' But in all these things our vices are ascribed to the choice of the human mind, which divine clemency mercifully turns to good in the elect and justly leaves to evil in those to be condemned. Therefore, just as, although we know most certainly that no one will live beyond the limit fixed for him by God, nevertheless we not unfittingly administer medicine to all the sick, so, although no one is saved unless predestined to life, nevertheless correction is to be applied to every offender, nor is discipline of the evil to be neglected." Hence the same Augustine to Boniface:

C. XXIV. Vengeance is not always to be exercised upon those who sin.

Piety itself, truth, and charity do not permit us to accept against Caecilian the testimony of those men whom we do not see in the church to which the Lord furnishes testimony. For those whom divine testimonies do not accompany have lost the weight of human testimony. Likewise: § 1. A physician is troublesome to a raging madman, and a father to an undisciplined son—the former by binding, the latter by beating, but both by loving. But if they neglect them and permit them to perish, that false gentleness is rather cruelty. Likewise: § 2. Therefore, if by the power that the church received by divine gift for the sake of religion and faith at the time when it ought, those who are found in the ways and hedges—that is, in heresies and schisms—are compelled to enter, let them not blame the fact that they are compelled, but attend to that to which they are compelled. The Lord's banquet is the unity of Christ's body, not only in the sacrament of the altar but also in the bond of peace. In the same: § 3. Emperor Theodosius promulgated a general law against all heretics that any bishop or cleric of theirs who was found anywhere should be fined ten pounds of gold. Likewise: § 4. If two persons were living together in one house that we knew most certainly would collapse, and, when we forewarned them of it, they refused to believe and persisted in remaining in it, if we could drag them out from there even against their will—we who had shown them beforehand that imminent collapse—so that they would not dare to return thereafter beneath its danger, I think that, unless we did so, we would not undeservedly be judged cruel. Furthermore, if one of them said to us, "When you enter to drag us out, I will immediately kill myself," but the other neither wished to depart from there nor to be dragged out, yet would not dare to kill himself, what would we choose: to leave both to be crushed by the collapse, or, when at least one had been freed by our labor, that the other should perish not by our fault but rather his own? No one is so unfortunate that he would not most easily judge what ought to be done in such matters. Likewise after a few words: § 5. But if there were very many in the house about to collapse, and at least one could be freed from it, and while I attempted to do this the others killed themselves by throwing themselves headlong, we would be consoled concerning the salvation of at least one, though grieving concerning the others. Nevertheless, lest the others destroy themselves, we would not permit all to perish with no one freed. What, therefore, is to be judged concerning a work of mercy that we ought to expend upon men for obtaining eternal life and avoiding eternal punishment, if true and benevolent reason compels us thus to assist men for freeing not only this temporal life but even a brief one of little

duration? Likewise: § 6. If, say the Donatists, it is fitting that we repent of having been outside the church and against the church so that we can be saved, how after this penance do we remain clerics or even bishops among you? This would not happen—since in truth, as must be confessed, it ought not to happen—unless a few were healed by this compensation. But let those say this to themselves and grieve much more and humbly who lie in so great a death of severance, so that they may revive by this certain wound of the Catholic mother. For when a severed branch is grafted, another wound is made in the tree by which it can be received, so that what was perishing without the life of the root may live. But when the branch received shall have grown together with the tree receiving it, both vigor and fruit follow; but if it shall not grow together, the branch indeed will wither, but the life of the tree will remain. For there is also such a kind of grafting that, with no branch that is within cut off, the branch that is outside is grafted; nevertheless, not without a wound, though the slightest, to the tree. Thus, therefore, when these persons come to the Catholic root and, after they have scarcely repented of their error, the honor of the clerical or episcopal office is not taken away from them, something is indeed done as though in the bark of the mother tree contrary to the integrity of severity. Nevertheless, because neither he who plants nor he who waters is anything, with prayers poured out to God's mercy and peace growing together among its branches, charity has covered a multitude of sins. And a little later: § 7. But in causes of this kind, where through grave rents of dissensions the danger is not that of this or that man, but the slaughter of peoples lies before us, something must be taken away from severity so that sincere charity may assist in healing greater evils. Therefore, let them have bitter grief concerning their detestable former error, as Peter had concerning the fear that produced his lie, and let them come to the true church of Christ—that is, the Catholic mother. Let them be clerics in it; let them usefully be bishops who were hostilely against it. We do not envy this; rather, we embrace, exhort, and desire it. And those whom we find in the ways or hedges we compel to enter, and yet we still do not persuade some that we seek not their property but themselves?

C. XXV. The evil are compelled to good by medicinal severity.

The same to Faustus, [letter 167]. What will the medicine of the church do, seeking the salvation of all with maternal charity, as though laboring amid the frenzied and the lethargic? Ought it or can it either contemn them or desist? If necessary, let it be troublesome to both, since it is the enemy of neither. For the frenzied are unwilling to be bound, and the lethargic are unwilling to be awakened, but the diligence of charity persists in binding the frenzied, stimulating the lethargic, and loving both. Both are offended, but both are loved. Both are indignant at being troubled so long as they are sick, but both rejoice when healed. In the same: § 1. They do not begin to be Catholics unless they cease to be heretics. For neither are their sacraments, which are common to us in them, hostile to us, because they are not human but divine. Their own error, which they entered badly, is to be taken away, not the sacraments that they received in the same manner, which they bear and have to their own punishment—the more unworthily they have them, but nevertheless they have them. PART IV. GRATIAN. Behold, crimes are to be punished when they can be struck while preserving the peace of the church; nevertheless, discretion is to be applied in this. For sometimes the multitude of offenders is to be awaited for a long time through patience unto penance; sometimes it is to be punished in a few, so that by their example the others may be terrified and provoked to penance. Hence, when the disciples wished to consume the Samaritans with heavenly fire, they were prohibited, and the

Samaritans were awaited unto penance so that, when Christ preached, they might be converted to the faith. Hence Ambrose says, [Book VII of the commentary on Luke 9:54]:

C. XXVI. Vengeance is not always to be exercised upon those who sin.

That Christ rebuked the disciples because they desired fire to descend upon those who had not received him shows us that vengeance is not always to be taken upon those who sin, because sometimes clemency benefits you more toward patience than it benefits the fallen man toward correction. Finally, the Samaritans from whom fire is here withheld believed more quickly; nor do the disciples, who follow the law, sin. For they knew both that it was reckoned to Phinehas as justice because he had killed the sacrilegious, and that at Elijah's prayers fire had descended from heaven. GRATIAN. Another thing can be understood in this prohibition of the Apostles. The Apostles wished to consume the Samaritans with fire not from zeal for justice but from the hatred of bitterness, to avenge the injury of their own expulsion. But the Lord, wishing them to tolerate with patience and joy an injury to their own person, but not to leave unavenged an injury to divine service, said, "You do not know of what spirit you are." Hence also Peter, who had heard with the others, "You will be blessed when men curse you and say every evil against you; rejoice on that day and exult, because your reward is abundant in heaven," received with joy insults inflicted upon himself; but he punished most sharply sins that were committed against God. Hence he struck Ananias and Sapphira, who lied to the Holy Spirit, with the sentence of death. Thus also Paul, while recalling the Corinthians from contempt of himself by pious admonition and manifold commendation of himself, struck with blindness that magician Elymas, who was drawing those about to believe away from the faith, so that the others, terrified, would not impede his preaching, but, believing in Christ, would escape blindness of the soul. And he delivered to Satan for affliction that Corinthian fornicator because he had sinned against God. Hence Gregory also writes to Bishop Januarius, rebuking him because he had excommunicated someone on account of an injury to his own person, saying, [Book II, indiction 10, letter 34]:

C. XXVII. A bishop is not permitted to excommunicate anyone for a personal injury.

Amid his many complaints, Isidore, a most illustrious man, complained that he had been excommunicated and anathematized by your fraternity without cause. When we wished to learn from your cleric, who was present, for what reason this had been done, it became known that it had been done for no other cause except that he had wronged you. This matter greatly afflicted us, because, if it is so, you show that you think nothing of heavenly things, but signify that your conduct is earthly, since for vengeance of a personal injury—which is prohibited by the sacred rules—you inflicted the curse of anathema. Henceforth, therefore, be altogether circumspect and solicitous, and do not again presume to inflict such things upon anyone in defense against an injury to you. For if you do any such thing, know that afterward it must be avenged upon you. GRATIAN. Hence the same in the *Homilies*, showing that sins committed against God or against a neighbor are to be punished by us, but those by which an offense is committed against us are patiently to be tolerated, or rather overlooked, says:

C. XXVIII. He greatly offends who lets debts owed to the Lord go unpunished.

If he who is prelate lets the faults of one indebted to the Lord go unpunished, he assuredly offends in no slight degree, since by his own presumption he releases the debts of the heavenly King and Lord. For those things that are committed against us we can easily forgive; but those that are committed against God we can remit with great discretion, yet not without penance. PART V. GRATIAN. But once a fault has been forgiven, it ought not to be recalled to mind again through recurring grief. Hence Gelasius to Bishops Gerontius, John, Germanus, and Peter:

C. XXIX. An injury that has once been forgiven ought not to be recalled again.

If, in the place where these things were done, it shall be established in the presence of both parties both that Stephen made satisfaction and that, his supplication having been received, the person who was badly treated forgave him, a punishment once sent into oblivion ought not to be repeated through recurring grief, in imitation, namely, of divine clemency, which does not permit forgiven sins to return for vengeance. But if nothing shall be proved either concerning satisfaction or concerning remission, let what was transacted be shown by a declaration of your charity, so that, if even now an appropriate satisfaction can be obtained, that may preferably be carried out whereby it can heal the mind of the afflicted man; or, if unforgiving bitterness persists, let punishment nonetheless be taken in that same place where the punishable presumption arose.

PART VI. GRATIAN. But that statement of Ambrose is raised as an objection: "At Elijah's prayers fire descended from heaven so that the Prophet's injury might be avenged." This is understood to have happened at the time when Ahab, king of Israel, after that barrenness of three years and six months which occurred when at Elijah's prayers heaven was closed for three years and six months, sent two captains of fifty to Elijah, who were to say to him, "Man of God, the king of Israel calls you"; he said, "If I am a man of God, let fire descend from heaven and consume you"; and immediately fire descended from heaven and consumed them. By this deed he wished to show not what merit he had before God, but by most evident signs to make manifest that the true God was the one whom he worshiped, not the one to whose worship Jezebel provoked certain persons by the prostitution of her own body. Therefore the Prophet's injury is understood as nothing other than the injury of the Lord himself, which is to be avenged upon a few so that the others may be terrified. Likewise that statement of Silverius is raised as an objection: [to Bishop Amator]

C. XXX.

Guilisarius our patrician commanded me to come peacefully to him in the prince's palace concerning certain ecclesiastical arrangements; and at the first and second veil he detained all the clergy and people who were coming with me, and permitted no one to enter except me alone and Vigilius our deacon. But after I had been detained by force and led before the aforesaid patrician woman, they sent me into exile, in which I am now sustained by the bread of tribulation and the water of anguish. Nevertheless, I did not, nor do I, abandon my office on that account; rather, with the bishops whom I was able to assemble, I anathematized those who did such things toward me, and together with them I established by apostolic authority that no one should ever be deceived in such a way, as I was deceived, and that if anyone thereafter should ever deceive any of the bishops in such a way, he

should become anathema maranatha in the sight of God and the holy angels. The same to Vigilius: § 1. Therefore, have with those who consent to you a sentence of complete condemnation, and recognize that the name and function of the priestly ministry have been taken from you, condemned by the judgment of the Holy Spirit and by apostolic authority from us. GRATIAN. But here also he avenged not his own injury but that of the church. Moses taught by example that the sin of the people is to be punished in a few, for he avenged the sin of idolatry upon a few worshipers of the calf, expiating the sins of many by the death of a few, causing fear in the present and sanctioning discipline for the future. Thus also Christ himself punished the sins of the whole people by the death of a few, when in one day twenty-three thousand perished for the fornication of the whole people. Thus also for the sin of murmuring or temptation certain persons were punished, so that by their example the others might be compelled to penance. Thus also God daily punishes certain persons, so that divine providence may be known to keep watch even over human affairs; and he also awaits certain persons for penance through long periods, so that he may show us the patience of his kindness. Thus Elijah also avenged the worship of Baal by killing its priests and prophets, expiating by the death of its authors the sins of the peoples who imitated them. § 1. But that sins which lack public proofs are not to be punished is proved by that example in which Christ, who alone knew Judas to be a thief, is asserted not to have cast him away, but to have tolerated him patiently.

Hence Ambrose says upon the First Epistle to the Corinthians, [c. 5]:

C. XXXI. It is not for a judge to condemn without an accuser.

If anyone does not have the power to cast away one whom he knows to be guilty, or is unable to prove it, he is free from blame; and it is not for a judge to condemn without an accuser, just as Christ did not cast away Judas. GRATIAN. Similarly, a sentence is not to be issued when a multitude is involved in the case, or when the one who sins has a multitude as his associate. Hence Augustine in Book II, [c. 2], *Against Parmenian*:

C. XXXII. What is sinned by a multitude, or by one who has a multitude as an associate, is not punished by the church, but mourned.

Correction by many cannot be salutary unless the person who has no multitude as an associate is reproved. But when the same disease shall have seized very many, nothing else remains for the good except grief and groaning, so that through that sign which is revealed to holy Ezekiel they may merit to escape unharmed from their devastation. And below: § 1. Truly, when the contagion of sinning has invaded a multitude, the severe mercy of divine discipline is necessary. For counsels of separation are both empty and pernicious and sacrilegious, because they are impious and proud, and they disturb the weak good more than they correct the spirited evil. And below: § 2. But when there is opportunity among the peoples to bring forth a discourse, the crowd of the wicked is to be struck with a general rebuke, especially if some scourge from the Lord above shall have furnished the occasion and opportunity, by which it appears that they are being beaten for their deserts. GRATIAN. But the evangelical precepts concerning love of enemies and mercy to be expended upon neighbors, and also the Apostle's exhortations concerning feeding or giving drink to enemies, are not to be understood to such an extent that impunity for sinning is granted, but so that correction may be provided to the offender and assistance to his nature, until, through the sentence of a judge, once hope of correction has been taken away, the practice of evils is removed. In this, therefore, we are

commanded to love our enemies and to have mercy on them: that we grieve over their perdition, desire their salvation, and daily labor and pray for their correction; that we expend consolations upon the penitent, bearing one another's burdens; not that we grant impunity to those who are obstinate and persist in evil. For just as we are admonished to be not severe but merciful toward the penitent, according to this: "Do not be excessively just, because there is a just man who perishes in his justice"; and again: "Judgment without mercy to him who has not shown mercy"; and likewise that statement of the Apostle in the Second Epistle to the Corinthians: "To whom you have forgiven anything, I also. For I too, if I forgave anything, forgave it for your sake, as if Christ himself were forgiving, so that we may not be circumvented by Satan. For we are not ignorant of his thoughts"—who makes those whom he cannot deceive by inducing consent excessively harsh—just as, I say, we are commanded to be merciful to the penitent, so we are prohibited from expending mercy upon the impenitent and those obstinate in evil.

Hence Ambrose in the book *On Duties*:

C. XXXIII. On just and unjust mercy.

There is an unjust mercy. Indeed, in the law it is written concerning a certain man, "You shall not have mercy upon him"; and in the books of Kings it is read that Saul incurred offense because he had mercy upon Agag, king of the enemies, whom the divine sentence had forbidden to be preserved. Thus, if anyone, moved by the entreaties of a robber's children and swayed by the tears of his wife, thinks that a man whose inclination still aspires to robbery should be absolved, does he not hand over the innocent to destruction, he who frees one contemplating the destruction of many? Certainly, if he restrains the sword, dissolves the bonds, and relaxes the exile, why does he not take away the opportunity for robbery by the more merciful way available to him, since he could not wrest away the will? Then, between two persons—that is, an accuser and a defendant—contending at equal peril concerning their life, the former if he had not proved his case, the latter if he had been convicted by the accuser: if the judge does not carry out what belongs to justice but has mercy upon one of them, he will either condemn the one proving his case, or, while he favors the accuser in what he cannot prove, he will sentence the innocent; therefore, this cannot be called just mercy. In the church itself, where one especially ought to have mercy, the form of justice ought especially to be maintained, lest anyone, removed from participation on account of an accusation, extort from the indulgence of the priest—by a brief little tear prepared for the occasion, or even by more abundant weeping—the communion that he ought to seek for very many periods of time. When he grants indulgence to one unworthy man, does he not provoke all to the contagion of falling? For facility of pardon furnishes an incentive to offending.

C. XXXIV. We ought not to have mercy upon a poor man in an evil case.

Likewise Augustine in the book of Psalms, [Psalm 32]. Lest judgment be lost, do not be merciful to a poor man in an evil case; for if you spare his purse, you strike his heart and render him so much more wicked as he sees that a just man favors him.

C. XXXV. Mercy is to be shown to the man; anger is to be directed against the sinner.

The same. When we speak these two names, "man" and "sinner," they are assuredly not spoken without purpose. Because he is a sinner, reprove him; and because he is a man, have mercy upon him. Nor will you free the man at all unless you have persecuted the sinner. All discipline keeps watch over this office, as it is fitting and adapted to each person who governs: not only to a bishop governing his people,

but also to a poor man governing his house, a rich man governing his household, a husband governing his wife, a father governing his offspring, a judge governing his province, and a king governing his nation. And a little later: § 1. Thus mercy is to be closed to no man, and impunity granted to no sin. Hence it is to be understood how alms, which by right of humanity is expended upon any poor persons, is not to be contemned, since the Lord relieved the need of the poor even from those money-boxes which he filled from the resources of others. And a little later: § 2. Therefore, let us not receive sinners on account of that by which they are sinners; nevertheless, because they are also men, let us treat those same persons with human consideration. Let us persecute their own iniquity in them; let us have mercy upon the nature common to us. GRATIAN. Likewise Augustine expounds in Book II *Against the Manichaeans*, [c. 70], that statement of the Gospel which was raised as an objection, "He who shall have used the sword will fall by the sword," saying thus:

C. XXXVI. Who is said to take up the sword.

He takes up the sword who arms himself against anyone's blood with no superior and legitimate authority either commanding or permitting it. PART VII. GRATIAN. Furthermore, that statement of Jerome by which the church is denied to persecute anyone is not to be understood in such a way that the church generally persecutes no one, but that it persecutes no one unjustly. For not every persecution is culpable; rather, we reasonably persecute heretics, just as Christ also bodily persecuted those whom he expelled from the temple. Hence Augustine says to Vincentius the Donatist:

C. XXXVII. Through the office of power, the unruly are usefully corrected.

They are exceedingly unruly, and it does not seem useless to me that they should be restrained and corrected through powers ordained by God. For we already rejoice in the correction of many. And after a few words: § 1. For if anyone saw his enemy, made frantic by dangerous fevers, running headlong, would he not then rather return evil for evil if he permitted him to go on in this way than if he bound him so that he might be corrected and cured? And nevertheless, at the time when he had proved most useful and most merciful to him, he would seem most troublesome and hostile to him. But assuredly, when health had been restored, the more fully would he give thanks to him, the more he perceived that he had not spared him. And after a few words: § 2. Yet these things do not benefit certain persons. Is medicine therefore to be neglected because the pestilence of some is incurable? Likewise after some words: § 3. Not everyone who spares is a friend, nor is everyone who beats an enemy. Better are the wounds of a friend than the kisses

of an enemy. It is better to love with severity than to deceive with gentleness. It is more useful for bread to be taken from a hungry man if, secure concerning food, he was neglecting justice, than for

bread to be broken for a hungry man so that, having been seduced, he may acquiesce in injustice. Likewise after a few words: § 4. Do you think that no one ought to be compelled to justice, when you read that the master of the household said to his servants, "Whomever you shall find, compel them to enter"; when you also read that Saul himself, first Saul and afterward Paul, was compelled to know and hold the truth by the great violence of Christ compelling him? Likewise after a few words: § 5. And you should know that a thief sometimes scatters fodder to lead cattle away, and a shepherd sometimes calls wandering cattle back with a whip. Likewise: § 6. If it were always culpable to carry out persecution, it would not have been written in the sacred books, "He who secretly slandered his neighbor, this man I persecuted." Therefore, sometimes both the one who suffers it is unjust and the one who carries it out is just. But assuredly, often both the evil have persecuted the good and the good the evil: the former by harming through injustice, the latter by consulting their welfare through discipline; the former savagely, the latter temperately; the former serving cupidity, the latter charity. For he who slaughters does not consider how he cuts. The one persecutes health; the other, putrefaction. The impious killed the Prophets; the Prophets also killed the impious. The Jews scourged Christ; Christ also scourged the Jews. The Apostles were handed over by men to human power; the Apostles handed men over to the power of Satan. In all these things, what is considered except who acts for truth, who for iniquity, who for the sake of harming, and who for the sake of correcting? And a little later: § 7. Emperor Constantine established that the property of those convicted and obstinately resisting unity should be claimed for the fisc. And after a few words: § 8. Certainly no one's crime stains one who is ignorant of it. Likewise: § 9. The deeds of those who do harm, which cannot be demonstrated to the innocent or believed by the innocent, do not defile anyone; rather, even when known, they are tolerated for the sake of fellowship with the innocent. For the good are not to be abandoned on account of the evil, but the evil are to be tolerated on account of the good, just as the Prophets tolerated those who said so many things against them, and did not abandon participation in the sacraments of that people.

C. XXXVIII. Heretics are to be drawn to salvation even against their will.

Likewise to Donatus the Presbyter, [letter 204]. It displeases you that you are drawn to the salvation of God, although you have drawn many of ours to destruction? For what do we wish except that you be apprehended, presented, and preserved, lest you perish? But as to the fact that you were injured in body, you did this to yourself, since you refused to use the pack animal that was immediately brought to you and violently dashed yourself against the ground. For certainly another man who was brought with you, a colleague of yours, came unharmed because he did not do such things to himself. But you think that this ought not to have been done to you either,

because you suppose that no one is to be compelled to the good. Attend to what the Apostle said: "He who desires the episcopate desires a good work." And nevertheless, so many persons, that they may undertake the episcopate, are detained against their will, brought forward, shut in, and suffer so many things they do not wish until the will to undertake the good work is present in them. How much more are you to be drawn away from the pernicious error in which you are enemies to yourselves, and to be led to the truth either to be known or to be chosen, not only so that you may salutarily possess honor, but also lest you perish most wickedly? § 1. You say that the Lord gave free choice, and that therefore a man ought not to be compelled to the good. Why, then, are those of whom we spoke above compelled to the good? Attend, therefore, to what you do not wish to

consider. Good will is mercifully expended for this purpose: that man's evil will may be directed. For who does not know both that a man is not condemned except by the desert of an evil will, and that he is not freed unless he has had a good will? Nevertheless, those who are loved are not therefore to be permitted to their evil will with impunity and cruelty; rather, where power is given, they are both to be prohibited from evil and compelled to good. For if an evil will is always to be permitted its liberty, why were the Israelites, when they refused and murmured, prohibited from evil by such harsh scourges and compelled to the land of promise? If an evil will is to be permitted its liberty, why was Paul not permitted to employ the most evil will by which he persecuted the church, but was prostrated so that he might be blinded, was blinded so that he might be changed, was changed so that he might be sent, and was sent so that he might suffer for the truth such things as he had done in error? If an evil will is always to be permitted its liberty, why is a father admonished in the holy Scriptures not only to reprove a hard son with words, but also to beat his sides, so that, compelled and subdued, he may be directed to good discipline? Hence the same Solomon says, "You strike him with the rod, but you free his soul from death." If an evil will is always to be permitted its liberty, why are negligent shepherds reproved, and why is it said to them, "You have not called back the wandering; you have not sought the lost"? And you are Christ's sheep; you bear the Lord's character in the sacrament which you received; but you wander and perish. Let us not therefore displease you because we call back the wandering and seek the wandering lost. For we better do the will of the Lord, who admonishes us to compel you to return to his fold, than consent to the will of those who wander, so that we permit you to perish. § 2. Therefore, do not now say what I hear you have repeatedly said: "Thus I will to wander; thus I will to perish." Much better, insofar as we can, we do not permit this. Just now, when you cast yourself into a well so that you might die, you assuredly did so by free will. But how cruel would the servants of God have been if they had permitted you to this evil will of yours and had not freed you from that death? Who would not deservedly blame them? Who would not rightly judge them impious? And yet you willingly cast yourself into the water so that you might die; they raised you unwilling from the water lest you die. You acted according to your will, but to your destruction; they acted against your will, but against your death. Therefore, if this bodily salvation is to be guarded in such a way that it is preserved even in the unwilling by those who love them, how much more that spiritual salvation, in the abandonment of which eternal death is feared? Although even in this death which you wished to inflict upon yourself, you would have died not only for a time but also eternally, because even if you were being compelled not to salvation, not to the church's peace, not to the unity of Christ's body, not to holy and undivided charity, but to some evil things, not even then ought you to have inflicted death upon yourself. Consider the divine Scriptures and examine, insofar as you can, and see whether any one of the just and faithful ever did this when they suffered such great evils from those who were driving them to destruction, not to life, to which you are being compelled. And after a few words: § 3. As I hear, you repeat what is written in the Gospel: that seventy disciples withdrew from the Lord and were permitted the choice of their evil and impious withdrawal, and that the other twelve who remained were answered, "Do you also wish to go away?" And you do not attend to the fact that at that time the church was first sprouting with a new shoot, and that prophecy had not yet been fulfilled: "And all the kings of the earth will adore him; all nations will serve him." Assuredly, the more this is fulfilled, the greater the power the church employs, so that it not only does not invite but also compels to the good. The Lord wished to signify this; although he had great power, he nevertheless first chose to commend humility. He also

showed this sufficiently evidently in that similitude of the banquet, where he sent to the invited and they refused to come, and he said to the servant, "Go out quickly into the streets and lanes of the city, and bring the poor and the feeble, the blind and the lame, in here. And the servant said to the lord, 'It has been done as you commanded, and there is still room.' And the lord said to the servant, 'Go out into the ways and hedges and compel them to enter, so that my house may be filled.'" See now how, concerning those who had come first, it was said, "Bring them in"; now it is said, "Compel." Thus were signified the beginnings of the church while it was still growing, so that there might also be strength to compel.

C. XXXIX. Heretics usefully suffer the things that Catholics usefully inflict.

The same upon John, [tractate XI, on c. 3]. When God wills to rouse the powers against heretics, against schismatics, against destroyers of the church, against those who spurn Christ, against blasphemers of Christ's baptism, let them not marvel. Since God repeatedly calls for Hagar to be beaten by Sarah, let her recognize herself as Hagar and lower her neck. When she, after being humbled, withdrew from her mistress, an angel met her and said, "What is it with you, Hagar, Sarah's maidservant?" When she had complained concerning her mistress, what did she hear from the angel? "Return to your mistress." Therefore, she is afflicted for this purpose: that she may return —and would that she return—because her offspring, like Jacob, will hold the inheritance with his brothers. But they marvel because Christian powers are stirred against detestable destroyers of the church. If they were not stirred, how would they render an account to God concerning their imperial power? Let your charity attend to what I say, because this pertains to Christian kings of the age: that in their own times they should will their mother the church, from whom they were spiritually born, to be at peace. And a little later: § 1. King Nebuchadnezzar decreed, saying, "Whoever shall utter blasphemy against the God of Shadrach, Meshach, and Abednego shall be destroyed, and their houses dispersed." Behold how a foreign king rages lest the God of Israel be blasphemed, who was able to free three boys from the fire. And they are unwilling for Christian kings to rage because Christ is spurned—Christ by whom not three boys, but the world together with the kings themselves, is freed from the fire of hell? And below: § 2. How, then, are these kings not to be stirred, who consider not three boys freed from the flame, but themselves freed from the flame of Gehenna, when they see Christ, by whom they were freed, spurned in Christians? When they hear it said to a Christian, "Say that you are not a Christian"? They wish to do such things, but at least they are unwilling to suffer such things. For see what things they do and what things they suffer: they kill souls; they are afflicted in body. They cause everlasting deaths, and complain that they suffer temporal ones.

C. XL. The church reasonably persecutes heretics.

The same *Against Petilian*, [Book II, c. 79]. He who sins does not sin by the authority of the law, but against the authority of the law. But because you ask what the reason for persecuting is, I in turn ask you whose voice it is that says in the Psalm, "He who secretly slandered his neighbor, this man I persecuted." Therefore, inquire into the cause and manner of persecution, and do not with such ignorance generally reprehend persecutors of the evil. [c. 82]. For we do not persecute you except as truth persecutes falsehood. Likewise, [c. 10]: § 2. Petilian said, "Did the Apostles persecute anyone, or did Christ hand anyone over?" Augustine responded: I could indeed say that Satan himself is worse than all evil men, to whom nevertheless the Apostle handed a man over for the destruction of

the flesh, so that the spirit might be saved on the day of the Lord Jesus; likewise, others concerning whom he says, "Whom I handed over to Satan, so that they may learn not to blaspheme." And the Lord, using a whip, expelled the dishonest merchants from the temple, where the testimony of Scripture that says, "Zeal for your house has consumed me," is also joined. Behold, we find the Apostle handing over, and Christ persecuting. [c. 19]: § 3. Why, through most violent crowds, are you even of your own accord wicked toward Catholic churches, wherever you have been able to attack, as the matter itself indicates by innumerable examples? But you say that you defend your own places, and you resist with cudgels and slaughter by whatever means you can. Why did you not hear there the voice of the Lord saying, "But I say to you, do not resist evil"? Or, if it is possible sometimes rightly to resist a violent man through bodily force, without thereby violating the precept that we heard from the Lord, "But I say to you, do not resist evil," why is it not also possible that through ordained and legitimate powers a pious man should expel an impious man, and a just man an unjust man, from sees that are unlawfully usurped or retained to the injury of God? For the false prophets did not suffer persecution from Elijah in the same manner as Elijah himself did from the most wicked king; nor, because the Lord was scourged by persecutors, are those whom he himself scourged and cast out of the temple to be compared to his sufferings. § 4. It remains, therefore, that you confess that nothing else is to be sought except whether you have acted justly or impiously. Do not marvel if God does not lack ministers through whom you may be scourged, because you suffer persecution not from us, but, as it is written, from your own deeds. And below: § 5. Your complaint concerning persecution will be quieted if you first consider and understand that not every persecution is culpable. Otherwise it would not laudably be said, "He who secretly slandered his neighbor, this man I persecuted." For daily we see both a son complain of a father as his persecutor, a wife of a husband, a servant of a master, a tenant of a landowner, a defendant of a judge, and a soldier or provincial of a commander or king, since the latter very often by most orderly power prohibit and restrain the men subject to them from graver evils through the terrors of lighter penalties, but very often deter them from a good life and good deeds by threatening and raging. But when they prohibit them from evil and unlawful things, they are correctors and counselors; but when from good and lawful things, they are persecutors and oppressors. Those who prohibit from evil are also blamed if the measure of correction exceeds the measure of the sin.

C. XLI. The church should seek aid from the kings of the earth against its enemies.

The same in the letter [48] to Vincentius. No example is found in the evangelical and apostolic writings of anything having been sought from the kings of the earth on behalf of the church against the enemies of the church. Who denies that it is not found? But that prophecy was not yet being fulfilled: "And now, O kings, understand; be instructed, you who judge the earth." For at that time what is read a little earlier in the same Psalm was still being fulfilled: "Why have the nations raged and the peoples meditated vain things? The kings of the earth stood forth, and the princes assembled together as one." Nevertheless, if past deeds in the prophetic books were figures of future things, in that king who was called Nebuchadnezzar both times were prefigured: both the one the church had under the Apostles and the one it now has. Therefore, in the times of the Apostles and martyrs, that which was figured when the aforesaid king compelled the pious and just to adore an image and cast those who refused into the fire was being fulfilled. Now that which a little later was figured in the same king is fulfilled, when, converted to honoring the true God, he decreed in his kingdom that

whoever blasphemed the God of Shadrach, Meshach, and Abednego should be subject to due penalties. Therefore, the earlier period of that king signified the earlier times of unbelieving kings, whom Christians suffer as impious men. But the later period of that king signified the times of faithful kings, whom the impious suffer as Christians. But assuredly, in the case of those who under the name of Christ were seduced by perverse men—lest perhaps they be wandering sheep of Christ who are to be recalled to the flock in another manner—tempered severity, and rather gentleness, is preserved, so that by the coercion of banishments and losses they may be admonished to consider what and why they suffer and may learn to place the Scriptures that they read before the rumors and calumnies of men. For who among us, who among you, does not praise laws given by emperors against the sacrifices of pagans? And certainly a far more severe penalty was established there. For capital punishment was established for that impiety. But with regard to correcting and restraining you, a plan has been adopted by which you might preferably be admonished to withdraw from error rather than be punished for a crime.

C. XLII. The church justly persecutes the evil.

The same, from the same, to Count Boniface, [letter 50]. If the true church is the one that suffers persecution, not the one that carries it out, let them ask the Apostle which church Sarah signified when she persecuted the maidservant. For he says that your free mother, the heavenly Jerusalem—that is, the true church of God—was figured in that woman who afflicted the maidservant. But if we examine the matter more carefully, the latter persecuted Sarah more by acting proudly than Sarah did her by restraining her. For the former did injury to her mistress; the latter imposed discipline upon the proud woman. Then I ask: if good and holy men carry out persecution against no one but only suffer it, whose voice do they suppose it to be in the Psalm where it is read, "I will persecute my enemies and apprehend them, and I will not turn back until they fail"? Therefore, if we wish to speak or acknowledge the truth, there is an unjust persecution which the impious carry out against the church of Christ. For the latter is blessed, because it suffers persecution for justice; but the former are wretched, because they suffer persecution for injustice. Accordingly, the latter persecutes by loving, the former by raging:

the latter so that it may correct, the former so that it may overthrow; the latter so that it may call back from error, the former so that it may hurl into error. § 1. But when those who are unwilling for just laws to be established against their impieties say that the Apostles did not seek such things from the kings of the earth, they do not consider that there was a different time then and that all things are suited to their own times. For what emperor then had believed in Christ? Who served him on behalf of piety against impiety by enacting laws? For at that time this prophetic statement was still being fulfilled: "Why have the nations raged and the peoples meditated vain things? The kings of the earth stood forth, and the princes assembled together as one against the Lord and against his Christ." For that which is said a little later in the same Psalm was not yet being done: "And now, O kings, understand; be instructed, you who judge the earth. Serve the Lord in fear and exult in him with trembling." How, then, do kings serve the Lord in fear except by prohibiting and punishing with religious severity those things that are done contrary to the Lord's commands? For he serves in one way because he is a man, and in another way also because he is a king. Because he is a man, he serves by living faithfully; because he is a king, he serves by sanctioning with suitable vigor laws that command just things and prohibit their contraries.

C. XLIII. By Christ's example, the evil are to be compelled to the good.

The same, [in the same letter]. Who can love us more than Christ, who laid down his life for his sheep? And although he had called Peter and the other Apostles by his word alone, Paul—afterward a great builder of his church, but previously its dreadful devastator—he not only restrained by his voice, but also prostrated by his power; and, while he raged in the darkness of unbelief, in order that he might desire the light of the heart when he arose, Christ first struck him with bodily blindness. If that blindness were not a punishment, he would not afterward have been healed from it; and when with open eyes he saw nothing, if he had them sound, Scripture would not narrate that at the imposition of Ananias's hand, so that their sight might be opened, what were like scales by which it had been closed fell from them. Where is what these men are accustomed to cry out: "It is free to believe or not to believe"? Upon whom did Christ inflict force? Whom did he compel? Behold, they have the Apostle Paul. Let them recognize in him Christ first compelling and afterward teaching, first striking and afterward consoling. But it is marvelous how he who entered the Gospel compelled by a bodily penalty labored more in the Gospel than all those who were called by the word alone; and the perfect charity of him whom greater fear compelled to charity casts fear outside. Why, therefore, should the church not compel its lost children to return?

C. XLIV. Moses scourged the people not with cruelty but with love.

The same *Against Faustus*, [Book XXII, c. 79]. What cruel thing did Moses command or do when, exercising holy zeal for the people committed to him and desiring them to be subject to the living and one true God, after he learned that they had sunk to fabricating and worshiping an idol and had prostituted their shameless mind to demons, avenging the matter with the sword upon a few of them whom God himself, whom they had offended, willed by a profound and secret judgment to be struck and struck at once, he both salutarily terrified them in the present and sanctioned discipline for the future? For who does not recognize in his words that he did what he did with no cruelty but with great love, when he prayed for their sins and said, "If you forgive them the sin, forgive it; but if not, blot me out from your book"? § 1. Thus assuredly the Apostle also, not cruelly but lovingly, handed a man over to Satan for the destruction of the flesh, so that the spirit might be saved on the day of the Lord Jesus; he also handed over others so that they might learn not to blaspheme.

C. XLV. It is not imputed to the faithful who by reason of office either employ tortures or pronounce a capital sentence.

Likewise Innocent, [letter III to Exsuperius, Bishop of Toulouse, c. 3]. Inquiry was also made concerning those who have exercised public office after baptism and either employed tortures alone or also pronounced a capital sentence. We read nothing concerning them as defined by the fathers. For they remembered that these powers had been granted by God, that the sword had been permitted for vengeance upon the guilty, and that the ministry of God had been given to avengers of this kind. How, then, would they reprehend as done what they saw to have been permitted with the Lord as its author? Concerning these persons, therefore, let us maintain what has been observed until now, lest we dare either to overturn discipline or to act contrary to the Lord's authority. But all their deeds will be reserved to them in the rendering of an account.

C. XLVI. The drafter is free from guilt when the authority of the laws is exercised against the wicked.

The same to the Bishop of Toulouse. You also wished to inquire whether, certainly after the regeneration of baptism, freedom is granted to those dictating petitions to seek from princes the death or blood of someone on account of a charge. Princes never grant this without cognizance, but always remit the matters or crimes committed to the judges, so that, once the case is known, they may be avenged. When these have been delegated to an examining judge, either acquittal or condemnation is pronounced according to the character of the business. And while the authority of the laws is exercised against the wicked, the drafter will be free from guilt.

C. XLVII. Almighty God is placated in the correction of the evil.

Likewise Gregory to Brunhild, Queen of the Franks, [Book VII, indiction 1, letter 5]. If, therefore, you know any violent persons, adulterers, thieves, or persons intent upon other depraved acts, hasten to placate God by their correction, so that through you he may not bring in the scourge of faithless nations, which, insofar as we see, has been roused for the vengeance of many nations; lest, if—as we do not believe—the anger of divine vengeance shall have been stirred by the activity of the wicked, the pestilence of war destroy those offending persons whom the precepts of God do not recall to the way of rectitude.

C. XLVIII. The enemies of ecclesiastical religion are to be restrained even by wars.

The same to Gennadius, Patrician and Exarch of Africa, [Book I, letter 72]. Just as the Lord has caused your Excellency to shine in this life with the light of victories in hostile wars, so it is fitting also to oppose the enemies of his church with every liveliness of mind and body, so that the renown of your Excellency may shine forth more and more from each triumph, since you both vehemently resist the adversaries of the catholic church for the Christian people in external wars, and as warriors of the Lord you bravely wage ecclesiastical battles. For it is known that men of heretical religion, if—which God forbid—license to do harm is available to them, rise up vehemently against the catholic faith, so that they may pour out the poisons of their heresy to waste away, if they can, the members of the Christian body. For we have learned that, with the Lord opposing them, they raise their necks against the catholic church and wish to bow down the faith of the Christian name; but let your Eminence repress their attempts and press their proud necks beneath the yoke of rectitude. Command that the council of catholic bishops be admonished not to appoint a primate according to the order of place while setting aside merits of life, since before God it is not the more distinguished rank, but the action of a better life, that is approved. But let the primate himself reside not indiscriminately through villages, as is customary, but in one of their cities according to their election, so that the capacity to resist the Donatists may be arranged with better ingenuity by reason of the dignity obtained. But if any from the council of Numidia desire to come to the Apostolic See, permit them; and if any persons should think to oppose their journey, resist them. Assuredly, the glory of your Excellency increases more before the Creator if through it the fellowship of the scattered churches can be restored. For when he beholds the gifts bestowed being recalled to the glory of his name, he bestows all the more abundant ones, the more he sees the dignity of his religion enlarged through them. Moreover, discharging the affection of paternal charity, we petition

the Lord that he may render your arm strong for repressing enemies, and sharpen the mind of your Excellency with zeal for the faith, like the edge of a flashing sword.

C. XLIX. Victory in wars is granted by the merit of faith.

The same to the same, [Book I, epistle 73]. If such prosperity in military actions did not come to your Excellency from the merit of faith and the grace of the Christian religion, it would not have been a matter for wonder, since we know that these things were also granted to military leaders of old. But since, by God's largess, you anticipate future victories not by carnal foresight but rather by prayers, it comes about that this falls within the realm of astonishment, because your glory descends not by earthly counsel but by God's largess from above. For where does the eloquent report of your merits not range? It declares that you frequently seek wars not from the desire to shed blood, but for the sake of enlarging the commonwealth in which we behold God worshiped, so that the name of Christ might range everywhere through the subject nations by the preaching of the faith. For just as outward works of virtues establish you as eminent in this life, so also the inward adornments of morals proceeding from a pure heart glorify you in the future life by participation in heavenly joys. For we have learned that your Excellency has furnished very many resources for feeding the sheep of blessed Peter, prince of the Apostles, such that it restored no small number of places of his patrimony, stripped of their own cultivators, by inhabitants granted from the Dacians. Therefore, whatever things you confer upon him with a most Christian mind, you await their recompense through hope in the future judgment. PART VIII. GRATIAN. It has briefly been shown that the good laudably persecute the evil, and the evil culpably persecute the good. But that saying of the Apostle, "But who are you, who judge another's servant?" is to be understood of the hidden things of another's heart. That vengeance may be inflicted has been shown. It now remains to show that it ought to be inflicted and that those who are punished are loved more than those who are left unpunished; each of these points is proved by the authority of many. For Augustine says:

C. L. God is provoked to wrath when the punishment of sins is deferred.

If we defer pursuing or avenging those things by which God is vehemently offended, we assuredly provoke the patience of the divinity to wrath. "Did not Achan, son of Zerah, transgress the commandment of the Lord, and did not his wrath lie upon all the people of Israel? And he was one man—and would that he alone had perished in his crime."

C. LI. Vengeance that avails for correction is not prohibited.

Likewise Augustine, *On the Lord's Sermon on the Mount*, Book I, [cc. 37 and 38]. That vengeance is not prohibited which avails for correction, which also pertains to mercy and does not impede that disposition by which each person is prepared to endure more things from him whom he wishes to be corrected. But no one is fit to inflict this vengeance unless he has overcome, by the gentleness of love, the hatred with which those who desire to avenge themselves are accustomed to burn. For it is not to be feared that parents are seen to hate a little son when, sinning, he is beaten by them lest he sin further. And certainly the perfection of the love of God the Father himself is proposed to us for imitation when it is said in what follows: "Love your enemies; do good to those who hate you; and pray for those who persecute you." And yet it is said of him through the Prophet: "For the Lord corrects him whom he loves, but he scourges every son whom he receives." And the Lord also says:

"The servant who does not know the will of his lord and does things not worthy of blows will be beaten with few; but the servant who knows the will of his lord and does things worthy of blows will be beaten with many." Therefore, let no one avenge except him to whom power has been given in the order of things, and let him avenge with that will with which a father scourges a little son, whom nevertheless, on account of his age, he cannot hate. For from this a most evident example is stated, by which it appears sufficiently that a sin can be avenged from love rather than left unpunished, so that he may will that the person whom he avenges be not wretched through punishment, but blessed through correction; nevertheless, let him be prepared, if there is need, to tolerate with an even mind more unlawful things from the person whom he wishes to be corrected, whether he has power to coerce him or does not have it. § 1. But great and holy men, who already knew most excellently that this death, which dissolves the soul from the body, was not to be feared, nevertheless, in accordance with the mind of those who feared it, punished certain sins by death, so that a useful fear might be struck into the living and, for those who were punished by death, death itself might not harm them, but the sin that could have increased if they lived might be diminished. Those men judged not rashly, to whom God had granted such judgment. Hence it is that Elijah put many to death by his own hand and by fire obtained from God, a thing that many other great and divine men, by the same spirit, also did not rashly, taking counsel for human affairs. When the disciples gave an example from that Elijah, recalling what had been done by him, so that power might also be given them to ask for fire from heaven to consume those who had not furnished them hospitality, the Lord reproved in them not the example of the holy prophet, but ignorance of avenging, which was still in the inexperienced, observing that they did not love correction but desired vengeance from hatred. And so, after he taught them what it was to love one's neighbor as oneself, and after the Holy Spirit was also poured in, whom, when ten days had been completed after his ascension, he sent from above as he had promised, such acts of vengeance were not lacking, although much more rarely than in the Old Testament. For there, for the greater part, servants were oppressed by fear; but here, above all, free persons were nourished by love. For at the words of the Apostle Peter, Ananias and his wife, as we read in the Acts of the Apostles, fell lifeless and were not raised again but buried.

C. LII. A Christian ought to persecute the things that are contrary to the truth.

Likewise Augustine, *Against Cresconius the Grammarian*, Book I. Any Christian who persecutes an unrighteous man is an enemy of Christ. What you say is true, if he does not persecute in him that which is an enemy of Christ. For surely a lord in a servant, a father in a son, and a husband in a wife, though both parties are Christians, ought not to leave unpersecuted vices contrary to Christian truth. Or indeed, if they do not persecute them, will they not deservedly be held guilty of negligence?

C. LIII. In what manner a man ought to love his neighbor as himself.

Likewise Augustine to Macedonius, [epistle 52]. A man ought to love his neighbor as himself, so that, whichever man he can, he may bring to the worship of God by the consolation of beneficence, or by the instruction of teaching, or by the coercion of discipline.

[PALEA.

C. LIV. On the same matter.

Likewise Augustine to Donatus the Presbyter, epistle 204. The evil are to be prohibited from evil and compelled to good.] GRATIAN. From all these things it is gathered that vengeance is to be inflicted not from love of vengeance itself, but from zeal for justice; not so that hatred may be exercised, but so that depravity may be corrected. But since vengeance is sometimes inflicted by losses of property, sometimes by scourgings, and sometimes even by death, it is asked whether it is a sin for a judge or minister to hand the guilty over to death.

Question V

GRATIAN. PART I. That it is lawful for no one to kill anyone is proved by that precept by which the Lord prohibited homicide in the law, saying: "You shall not kill." Likewise in the Gospel: "Everyone who shall have taken up the sword will perish by the sword."

C. I. The evil are not to be killed, but amended by scourges.

Likewise Augustine to Count Marcellinus, concerning the captured Donatists, [epistle 159]. I have learned that those Circumcellions and clerics of Donatus's party, whom the cause of public discipline had brought from the region of Hippo to trial on account of their deeds, were heard by your Nobility, and that very many of them confessed to the murder that they committed against Restitutus, a Catholic presbyter, and to the slaughter of Innocent, another Catholic presbyter, as well as to the gouging out of his eye and the cutting off of his finger. Hence the greatest solicitude was struck into me, lest perhaps your Sublimity decree that they be punished with such severity of the laws that they suffer things such as they did. And therefore by these letters I adjure your faith, which you have in Christ, through the mercy of our Lord himself, that you not do this and not at all permit it to be done. For although we could dissemble concerning their death, because they appear to have been presented for examination not with our people acting as accusers but by their notaries, to whom the vigilance for guarding the public peace pertained, nevertheless we do not wish the sufferings of the servants of God to be avenged, as it were, in the punishments of an opposing party—not because we prohibit the license for crimes from being taken away from wicked men, but because we wish this rather to suffice: that, alive and mutilated in no part of the body, they be directed either from insane restlessness to the repose of soundness by the coercion of the laws, or from malicious works be assigned to some useful work. This too is indeed called condemnation; but who does not understand that it is rather to be named a benefit than a punishment, where neither the audacity for raging is set free nor the salutary medicine of repenting withdrawn? Fulfill, Christian judge, the office of a pious father. Remember so to be inflamed against iniquity that you do not exercise the lust for avenging upon the atrocities of sinners, but apply the will to heal to the wounds of sinners. Do not lose the paternal diligence that you preserved in the inquiry itself, when you drew out the confession of so many crimes not by stretching them upon the rack, not by claws plowing them, not by burning flames, but by blows of rods—a manner of coercion that is applied both by teachers of the liberal arts and by parents themselves, and that is also often customarily employed by bishops in judgments. Therefore, do not avenge more harshly what you discovered more gently. The necessity of inquiring is greater than that of punishing. For even the mildest men ought diligently and insistently to examine an admitted crime for this purpose: that they may find those whom they may spare.

C. II. The guilty are to be punished short of the penalty of death.

The same to Marcellinus, [epistle 158]. I ask you that their punishment, although they have confessed to such great crimes, be short of the penalty of death, both on account of our conscience and on account of commending Catholic gentleness. For the fruit of their confession itself reaches us, because the Catholic Church finds where she may preserve and exhibit mildness toward the most atrocious enemies. For amid such great cruelty, whatever vengeance shall proceed short of blood will appear great mildness. And although now this seems unworthy to certain of our people, moved by that atrocity, and like dissolution and negligence, nevertheless, when the commotions of minds—which are accustomed to be more turbulently aroused by more recent deeds—have passed, its excellently luminous goodness will appear.

C. III. The evil are to be prohibited from evil and compelled to good.

The same to Donatus, [epistle 127]. There is one thing alone that we fear in your justice: lest perhaps —since whatever evil is committed against Christian society by impious and ungrateful men is assuredly graver and more atrocious than if it were committed against others—you too decree that it be restrained in proportion to the enormity of the crimes and not rather in consideration of Christian mildness. We entreat you through Jesus Christ not to do this. And a little later: § 1. From the occasion of terrifying judges and laws, we desire them to be corrected, not killed, lest they pay the penalties of eternal judgment; and we do not wish discipline concerning them to be neglected, nor that they be restrained by the punishments of which they are worthy. Therefore, so check their sins that there may be persons who repent that they sinned. And a little later: § 2. Consequently, if you think that these men are to be killed, you will deter us from bringing any such matter to judgment through our agency. When this becomes known, they will run riot to our destruction with more unrestrained audacity, the necessity being imposed upon us that we choose even to be killed by them rather than bring them before your tribunals to be killed.

C. IV. The peace of the church is assisted by the severity of princes.

The same, [to Macedonius, epistle 54]. Your severity, by whose ministry our peace too is assisted, is useful. Our intercession, by whose ministry your severity too is moderated, is useful. Let it not displease you that you are petitioned by the good, because neither does it displease us that you are feared by the evil. § 1. For the Apostle Paul frightened the iniquity of men not only by the future judgment, but also by your present secular powers, asserting that even they pertain to the dispensation of divine providence. “Let every soul,” he says, “be subject to higher powers, etc.” These words of the Apostle show the usefulness of your severity. Consequently, just as those who fear were commanded to owe love to those who terrify them, so those who terrify were commanded to owe love to those who fear them. Let nothing be done from the desire to harm, but all things from the charity of taking counsel, and let nothing be done brutally, nothing inhumanly. Let the vengeance of the examiner be feared in such a way that the piety of the intercessor is not despised, because both in punishing and in pardoning this alone is done well: that the life of men be corrected. But if there is such great perversity and impiety that the remedies neither of discipline nor of pardon support the correction of the matter, nevertheless, from every intention and conscience, which God beholds, whether by severity or by mildness, nothing but the office of love is fulfilled.

[PALEA. C. V.

Nevertheless, this is to be understood of those whom present punishments change for the better, not of those who are obstinate in evil, who, if they lived forever, would sin forever, whose punishment begins here and will endure eternally.]

C. VI. Certain persons are punished at present lest they be scourged eternally.

Likewise Jerome on the Prophet Nahum, [at c. 1]. What, then, he says, do you devise against the Lord? He who created the world will also bring about its consummation. What if he seems to you cruel and harsh and bloodthirsty because in the flood he destroyed the human race, rained fire and sulfur upon Sodom and Gomorrah, submerged the Egyptians beneath the waves, and laid low the corpses of the Israelites in the wilderness? Know that he rendered punishments at present for this reason, that he might not punish eternally. Surely either the things the Prophets speak are true or they are false. If the things that they appear to say concerning his severity are true, they themselves said: "The Lord will not judge twice for the same thing in tribulation"; but if they are false, then that which is said, "A double tribulation will not arise," is also false; therefore, the cruelty written in the law is also false. But if it is true—and they will not be able to deny it, since the Prophet says, "God will not judge twice for the same thing in tribulation"—then those who were punished will not be punished afterward. But if they will be punished afterward, Scripture lies, which it is impious to say. Therefore, those who perished in the flood, the Sodomites, the Egyptians, and the Israelites in the wilderness received their evils in their life. § 1. Someone may ask here: if a faithful man caught in adultery is beheaded, what happens to him afterward? For either he will be punished, and that which is said—"He will not judge twice for the same thing in tribulation"—is false; or he will not be punished, and it is to be wished for adulterers that by a brief and swift punishment at present they escape eternal torments. To this we shall answer that God, just as he knows the measures of all things, so also knows the measures of punishments; that he is not forestalled by the sentence of a judge; that the power thereafter to exercise punishment upon a sinner is not taken away from him; and that a great sin is expiated by great and long-lasting torments. But if anyone has been punished like that man in the law who had cursed the Israelites and the man who had gathered wood on the Sabbath, such persons are not punished afterward, because a slight fault has been compensated by present punishment.

C. VII. Those guilty of blood are to be defended by the church.

Likewise Gregory. Let the church defend those guilty of blood, lest she become a participant in the shedding of blood. PART II. GRATIAN. From this it appears that the evil are to be restrained by scourges, not punished by truncation of limbs or temporal death. § 1. But that which the Lord says to Moses is objected: "You shall not suffer sorcerers to live"; likewise: "He who shall have intercourse with a beast shall die the death." One marked by the crime of adultery or blasphemy is also ordered to be stoned without mercy. Likewise Moses, who had received the law, punished the worshipers of the idol by death. Samuel also cut the exceedingly fat King Agag into pieces. Phinehas too pierced with a sword a Jew having intercourse with a Midianite woman, and this was reckoned to him as justice. Similarly, certain persons in the Old Testament are found to have slaughtered the evil, and they are called not transgressors of the law but defenders. § 2. Therefore, by that precept each person

is prohibited from being armed by his own authority for the killing of anyone, not from handing the guilty over to death by the command of the law. For he who, exercising public power, kills the evil by the command of the law itself is held neither a transgressor of that precept nor an alien from the heavenly fatherland. Hence Augustine to Publicola, [epistle 154]:

C. VIII. It is not a sin to kill a man in the discharge of an office.

Concerning killing men lest someone be killed by them, the counsel does not please me, unless perhaps he is a soldier or is bound by a public function, so that he does this not for himself but for others or for the city in which he too is, having received lawful power, if it befits his person. But perhaps something is furnished even to those who are repelled by some terror lest they do evil. Now it was said, "Let us not resist evil," lest vengeance, which feeds the mind upon another's evil, delight us—not so that we neglect the correction of men. Hence neither is he guilty of another's death who, after he has drawn the circuit of walls around his possession, has someone perish when struck by their use. Nor is a Christian guilty if his ox kills someone by goring, or his horse by kicking; nor for that reason ought Christians' oxen not to have horns, or a horse hooves, or dogs teeth. Or indeed, since the Apostle Paul took sufficient action that the ambush prepared for him by certain abandoned men be brought to the tribune's notice, and on this account received armed escorts, if those criminal men had fallen upon them, would Paul have acknowledged his own guilt in the shedding of their blood? Far be it that the things we do or possess for a good and lawful purpose should be imputed to us if, through them, something evil should happen to anyone contrary to our will. Otherwise neither are domestic and agricultural iron tools to be possessed, lest someone kill either himself or another with them; nor trees to be planted, lest someone hang himself from one; nor a window to be made, lest someone cast himself down through it. And why should I recount more, when I could not finish by recounting them? What is there in the good and lawful use of men from which destruction cannot be inflicted? PART III. GRATIAN. But to kill himself is permitted to no one by any authority of law. Hence Augustine in Book I of *The City of God*, [c. 17]:

C. IX. Those who waged wars with God as author in no way transgressed the precept not to kill.

If by private power it is not lawful for anyone to kill an innocent man, for whose killing no law grants license, assuredly he who kills himself is also a homicide, and by so much does he become more guilty when he has killed himself as he was more innocent in that cause on account of which he thought he ought to be killed. For if we deservedly detest what Judas did, and Truth judges that, when he hanged himself with a noose, he increased rather than expiated the commission of that criminal betrayal—since, by despairing of God's mercy and repenting ruinously, he left himself no place for saving penance—how much more ought he who has nothing in himself to punish by such a penalty abstain from his own slaughter? For when Judas killed himself, he killed a criminal man, and yet he ended this life guilty not only of Christ's death but also of his own, because, although on account of a crime, he was nevertheless killed by another crime of his own. § 1. But why should a man who did nothing evil do evil to himself, and by killing himself kill an innocent man lest he suffer another man who is guilty, and perpetrate his own sin upon himself lest another's be perpetrated upon him? Likewise, [c. 20]: § 2. In the holy and canonical books it can nowhere be found divinely commanded or permitted to us that we inflict death upon ourselves, either for the sake of attaining immortality itself or for the sake of avoiding or curing anything. For it is to be understood that we

too were prohibited where the law says, "You shall not kill," especially because it did not add "your neighbor," as when it prohibited false testimony: "You shall not speak," it says, "false testimony against your neighbor." Yet if anyone should speak false testimony against himself, he should not on that account think himself alien from this crime, since he received the rule for loving his neighbor from himself, seeing that it is written: "You shall love your neighbor as yourself." Moreover, if he who falsely confesses concerning himself is no less guilty of false testimony than if he did this against his neighbor, although in that precept by which false testimony is prohibited it is prohibited against one's neighbor and it can appear to those who do not understand rightly that it is not prohibited for each person to stand forth as a false witness against himself, how much more is it to be understood that it is not lawful for a man to kill himself, since in that which is written, "You shall not kill," with nothing added thereafter, assuredly he himself to whom the command is given is not understood to be excepted? Likewise: § 3. "You shall not kill"—neither yourself nor another. For he who kills himself kills nothing other than a man. § 4. But the same divine authority itself made certain exceptions, though with these excepted whom God commands to be killed, whether by a law given or by an express command to a person for a time; or he himself who kills owes ministry to the one commanding, as a sword is a support to the one using it. And therefore those who waged wars with God as author, or who, bearing the person of public power, punished criminals by death according to the right of law—that is, the command of most just reason—in no way acted against that precept which was said: "You shall not kill." And Abraham not only was not blamed for the crime of cruelty, but was even praised in the name of piety, because he willed to kill his son by no means criminally but obediently. And it is deservedly asked whether it is to be held as done by God's command that Jephthah killed his daughter who met her father, when he had vowed that he would sacrifice whatever first met him when he returned victorious from battle. Nor is Samson otherwise excused because he crushed himself together with his enemies by the fall of the house, unless because the Spirit who worked miracles through him had secretly commanded this. Therefore, excepting those whom either a just law generally or God himself, the fountain of justice, specially commands to be killed, whoever kills a man, whether himself or anyone else, is bound by the crime of homicide. Likewise, [c. 26]: § 5. This we say, this we affirm, this we approve in every way: that no one ought to inflict voluntary death upon himself, as though by fleeing temporal troubles, lest he fall into perpetual ones; no one on account of another's sins, lest by this very thing he begin to possess his own most grave sin; no one on account of his own past sins, for which there is greater need in this life so that they may be healed by repenting; no one as though from desire for a better life, which is hoped for after death, because a better life after death does not receive one guilty of his own death.

C. X. It is lawful for no one to lay hands upon himself.

The same, *Against Petilian*, [Book II, c. 49]. You said: "The betrayer perished by a noose; he left the noose to such men." This does not pertain to us at all. For we do not venerate under the name of martyrs those who bound their own necks.

C. XI. On the same matter.

Likewise Jerome on the Prophet Jonah, [at c. 1, not far from the end]. It is not ours to seize death, but willingly to receive it when inflicted by others. Hence also in persecutions it is not lawful to

perish by one's own hand—apart from a case where chastity is endangered—but to submit one's neck to the striker.

C. XII. No prayer is to be made for those who kill themselves.

Likewise from the Council of Braga, [I, c. 34]. It was resolved that for those who voluntarily inflict death upon themselves either by iron, or by poison, or by a fall, or by hanging, or in any manner, no commemoration be made for them in the oblation, nor are their corpses to be conducted to burial with psalms. For many claim this for themselves through ignorance. It was likewise resolved that this be done concerning those who die for their crimes. GRATIAN. "Impenitent" is to be understood. The same in the same Book I:

C. XIII. A soldier who kills a man in obedience to the power is not guilty of homicide.

PART IV. When a soldier, obeying the power under which he has lawfully been established, kills a man, he is guilty of homicide under no law of his city; rather, if he does not do it, he is guilty of having deserted and despised the command. But if he had done this of his own accord and authority, he would have incurred the crime of shed human blood. And so, from the same source from which he is punished if he does it without being ordered, he will be punished if he does not do it when ordered.

C. XIV. He who voluntarily kills those whom a judge orders to be killed is a homicide.

Likewise in the *Questions on Exodus*, [question 39, at c. 11]. When a judge's minister kills him whom the judge ordered to be killed, assuredly, if he does it voluntarily, he is a homicide, even if he kills him whom he knows ought to have been killed by the judge.

C. XV. Just as obedience is rightly praised, so he who usurps things not granted to him is reproved.

The same, [Book XXII *Against Faustus*, c. 73]. The eternal law has placed certain things in a kind of middle position in such a way that boldness is deservedly reproved in usurping them, while obedience is rightly praised in executing them. If Abraham had been moved of his own accord in killing his son, he would be held execrable; but by complying with God's command, he performed service.

C. XVI. The offices of vengeance can be fulfilled with a good intention.

The same in the *Questions on Matthew*, [Book I, question 10]. The good can fulfill the offices of vengeance with a good intention, as can a judge, as can the law.

C. XVII. He who prosecutes a crime so that he may free a man is bound not by the fellowship of iniquity but of humanity.

The same to Macedonius, [epistle 54]. He who is a prosecutor of a crime in order that he may be a liberator of a man is bound by the fellowship not of iniquity but rather of humanity.

C. XVIII. Why royal power and legal torments were instituted.

The same, [in the same epistle]. Not in vain were instituted the power of the king, the right of the examiner, the executioner's claws, the soldier's weapons, the discipline of the ruler, and even the severity of a good father; let all these things have their measures, causes, reasons, and uses. When these things are feared, both the evil are restrained and the good live in peace among the evil.

C. XIX. Sometimes he who furnishes the cause of death sins more than the one who kills.

Likewise. When a man is killed by a man, it makes a great difference whether it is done from a desire to harm or unjustly to take something away—as it is done by an enemy, as by a robber—or in the order of avenging or obeying—as by a judge, as by an executioner—or from the necessity of escaping or giving aid, as a robber is killed by a traveler, an enemy by a soldier. § 1. And sometimes he who was the cause of death is more at fault than the one who kills, as if someone should deceive his surety and the latter should pay the lawful penalty for him. Yet not everyone who is the cause of another's death is guilty. For example, what if someone seeks fornication and kills himself if he does not obtain it? What if a son, fearing the pious blows of his father, perishes by a fall? What if another, because a man has been freed or lest another be freed, inflicts death upon himself? Surely on account of these causes of others' deaths one must neither consent to crime, nor abolish even paternal vengeance for sin, which is done not from zeal for harming but for correcting, nor restrain works of mercy? When these things happen, we owe those persons human sorrow; we should not, on account of those things, restrain the will to do right lest they happen.

C. XX. What priests are not able to accomplish by teaching, let the power exact by the terror of discipline.

Likewise Isidore, [Book III of the *Sentences on the Highest Good*, c. 53]. Secular princes sometimes hold the summits of power attained within the church so that through that power they may fortify ecclesiastical discipline. Otherwise powers would not be necessary within the church, except so that what priests are not able to accomplish through the word of teaching the power may command through the terror of discipline. Often the heavenly kingdom profits through an earthly kingdom, so that those who, placed within the church, act against faith and discipline may be crushed by the rigor of princes, and the princely power may impose upon the necks of the proud that very discipline which the usefulness of the church is not able to exercise, and may impart the strength of power so that it may merit veneration. Let secular princes know that they will owe an account to God on account of the church that they undertake to protect for Christ. For whether the peace and discipline of the church is increased through faithful princes or dissolved, he who entrusted his church to their power exacts an account from them.

C. XXI. Let both royal and priestly authority defend the things that pertain to divine confession.

Likewise Pope Leo, [epistle 29 to the Empress Pulcheria]. All affairs cannot be secure otherwise unless both royal and priestly authority defend the things that pertain to divine confession.

C. XXII. Let secular power correct those whom priestly admonition cannot correct.

Likewise from the Third Council of Tours, [c. 41]. Many incestuous persons, parricides, and homicides are found among us; but some of them are unwilling to lend an ear to the admonitions of priests, wishing to persist in their former crimes. Those who were unwilling to return through the saving admonitions of priests ought to be restrained from so depraved a custom through the discipline of secular power.

C. XXIII. To restrain the evil and relieve the good is the office of kings.

Likewise Jerome on Jeremiah, [at c. 22]. It is proper to kings to execute judgment and justice, and to free from the hand of false accusers those oppressed by force, and to furnish aid to the stranger, the orphan, and the widow, who are more easily oppressed by the powerful. And in order that he might instill in them a greater care for the precepts of God, he added: "Do not afflict them," so that you not only rescue them, but not even suffer them, through your connivance, to come to be afflicted by others; "and do not shed innocent blood in this place." For homicides and sacrilegious persons, etc. And after a few things: "If," he says, "you do these things, O kings of Judah, you will hold your former power." PART V. GRATIAN. But faithfulness and reverence ought to be preserved toward princes and powers themselves, and whoever does not exhibit them will not be able to find rewards with God. Hence the same Jerome, [in the epistle to Titus, c. 2, at the verse, "Servants, to their masters"]:

C. XXIV. He who disdains to preserve faithfulness and reverence toward the powers is defrauded of eternal reward.

If they shall have been faithful to carnal masters in the least things, greater things will begin to be entrusted to them before the Lord. But he adorns the Lord's doctrine who does the things that are fitting to his condition, just as, conversely, he confounds it who is not subject in all things, whose condition displeases him, who, as a contradictor and defrauder, shows good faith in nothing. For how can he be faithful in the substance of God who was not able to exhibit faithfulness to a carnal master?

C. XXV. Military discipline preserves all things for the king.

Likewise Ambrose in Book I *On the Patriarchs*, [that is, *On Abraham*, c. 3]. Someone may say: since Abraham himself conquered, how does he say to the king of the Sodomites, "I shall take nothing from you," when the spoil assuredly was in the power of the victor? He teaches military discipline: that all things be preserved for the king. To be sure, he asserts that a share of the profit was to be bestowed upon those who had perhaps been joined with him in aid, as the wages of labor. And therefore, since he did not seek a reward for himself from man, he received it from God, as we read it written that after these words the word of the Lord came to Abraham in a vision, saying: "Do not fear, Abraham; I shall protect you, and your reward will be exceedingly great." PART VI. GRATIAN. Moreover, just as we are compelled to exhibit faithfulness and reverence to princes and powers, so the necessity of defending churches lies upon the administrators of secular dignities. But if they disdain to do this, they are to be repelled from communion. Hence John VIII:

C. XXVI. Those who act in positions of dignity ought to hear the complaints of churches more attentively.

Assuredly, the administrators of secular dignities, who without doubt ought to have been established for the protection of churches, the protection of orphans and widows, and the restraint of the rapacious, whenever they shall have been approached by bishops and ecclesiastical men, are to hear their complaints more attentively, and, according as necessity shall require, examine them without negligence and correct them with diligent zeal. But if, not having the fear of God before their eyes, they shall have been found to neglect this after a second and third admonition, let them know themselves deprived of all communion until worthy satisfaction.

C. XXVII. The opposing powers are not only men but avengers of the wrath of God.

Likewise Jerome on Joel, [at c. 2]. PART VII. Not only are men ministers and avengers of God's wrath upon those who work evil—whence they do not bear the sword without cause—but also the opposing powers, which are called the fury and wrath of God.

C. XXVIII. He who slaughters the cruel is not such as he appears to those suffering.

The same on Isaiah, [at c. 13]. He who slaughters the cruel is not cruel, but appears cruel to those suffering. For a robber suspended upon a gibbet thinks the judge cruel.

C. XXIX. He who strikes the evil in that in which they are evil is a minister of the Lord.

The same on Ezekiel, Book III, [at c. 9]. He who strikes the evil in that in which they are evil, and has instruments of killing so that he may kill the worst, is a minister of the Lord.

C. XXX. A judge who binds a man does not commit a crime.

The same on the Epistle to the Galatians, Book II, [at c. 3]. A judge is not the author of a crime by binding men.

C. XXXI. He who punishes homicides and sacrilegious persons does not shed blood.

The same on Jeremiah, [Book IV, at c. 22]. To punish homicides, sacrilegious persons, and poisoners is not the shedding of blood but the ministry of the laws.

C. XXXII. Secular princes ought not to spare the worst persons.

Likewise Cyprian, [in the book *On Exhortation to Martyrdom*, c. 5]. If you hear in one of the cities that the Lord your God will give you to inhabit there persons saying, "Let us go and serve foreign gods, whom you do not know," by slaying you shall kill all who are in the city by the stroke of the sword, and you shall burn the city with fire, and it shall be without an inhabitant forever; it shall not be rebuilt even now, so that the Lord may be turned away from the indignation of his wrath. And he will give you mercy and have mercy upon you and multiply you, if you hear the voice of the Lord your God and observe his precepts. Mindful of this precept and rigor, Mattathias killed the man who had approached the altar to sacrifice. But if before the advent of Christ these precepts concerning

worshiping God and spurning idols were observed, how much more are they to be observed after the advent of Christ, when he, coming, exhorted us not with words alone but also with deeds?

C. XXXIII. Unbelief is sometimes chastised by the scourges of tribulations.

Likewise Augustine, *Against Petilian*, [Book II, c. 83]. "No one is to be compelled to the faith," as you say; but unbelief is accustomed to be chastised through severity—indeed, also through the mercy of God—by the scourges of tribulations. Surely because the best morals are chosen by freedom of the will, are the worst morals therefore not punished by the integrity of the law? But nevertheless a discipline that avenges living evilly is inverted unless a preceding care for living well sets the teaching before it. Thus, therefore, by the laws established against you, you are not compelled to do good, but are prohibited from doing evil. For no one can do good unless he has chosen, unless he has loved, which is in the free will. § 1. When the laws establish something against you, believe that you are being admonished to consider why you suffer these things. If it is on account of justice, truly those men are your persecutors, but you are the blessed who, having suffered persecution on account of justice, will possess the kingdom of heaven. But if it is on account of the iniquity of your schism, then those men are indeed your correctors, while you, like the other guilty persons of diverse crimes who pay penalties under the laws, are assuredly unhappy both in this age and in the future one.

C. XXXIV. Injury to the sacraments of Christ is to be avenged by kings.

The same, [in the same book, c. 92]. If Nebuchadnezzar was not for that reason a persecutor, because he most justly avenged the crime committed against holy Daniel, how is the blowing away of the sacraments of Christ to be avenged by kings, if the limbs of a Prophet, because they were placed in danger, merited to be avenged in this way?

C. XXXV. Those who persecute the evil so that they may flee from evil are most diligent rulers.

The same, [in the book *On the Unity of the Church*, c. 17]. If holy and canonical Scripture proves that you have erected altars against the church of Christ, that you have been separated by a sacrilegious schism from Christian unity, which is spread throughout the whole world, and that you are adversaries of the body of Christ—which is the church spread throughout the whole world—by rebaptizing, blaspheming, and opposing it as much as you are able, are you not impious and sacrilegious? But those who decree that, for so great a crime, you are to be deterred and restrained by such light admonitions of losses, or by deprivation of places, honors, or money, so that, considering why you suffer these things, you may recognize and flee your sacrilege and be freed from eternal condemnation, are reckoned most diligent rulers and most pious counselors.

C. XXXVI. A servant or son is not loved when he is not corrected.

The same on the Epistle of John, [tractate VII]. Do not think that you love your servant when you do not beat him, or that you love your son when you do not give discipline, or that you love your neighbor when you do not correct him. That is not charity but languor. Let charity burn to amend, to correct. If the morals are good, let them delight; if they are evil, let them be amended.

C. XXXVII. It is the office of the innocent person to harm no one and to punish the sinner.

The same on Book [XIX] of *The City of God*, [c. 16]. It is not a matter of innocence, by sparing, to permit a person to fall into a graver evil. Therefore, it pertains to the office of the innocent person not only to inflict evil upon no one, but also to restrain from sin or to punish sin, so that either he who was previously held in hatred may himself be corrected by experience, or others may be terrified by example.

C. XXXVIII. He who spares for the nourishment of vices is not merciful.

The same to Laetarius. He who spares and favors the nourishment of vices lest he afflict the will of those sinning is no more merciful than one who does not wish to snatch a knife from a boy lest he hear him crying, and does not fear lest he grieve over him wounded or dead.

C. XXXIX. Enormous crimes are to be corrected through the judges of the age.

Likewise Haimo on the Epistle to the Romans, [c. 13]. There are certain enormous crimes that are avenged through the judges of the world rather than through prelates and rulers of churches, as when someone kills the apostolic pontiff, a bishop, a presbyter, or a deacon. The kings and princes of the world condemn guilty persons of this kind. Therefore, he who adjudicates such crimes does not bear the sword without cause. For they have been established especially on account of homicides and robbers, so that they may both condemn them and check others by fear of them.

C. XL. Thefts and other crimes are to be restrained by the king.

Likewise Cyprian in the ninth kind of abuse. A king ought to restrain thefts, punish adulteries, destroy the impious from the earth, not suffer parricides and perjurers to live, and not suffer his sons to act impiously.

C. XLI. He who kills a guilty person in the discharge of an office does not sin.

Likewise Augustine, *On Free Choice*, Book I, [c. 4]. If it is homicide to kill a man, one can sometimes kill without sin. For neither a soldier who kills an enemy, nor a judge or his minister who kills a guilty person, nor one from whose hand a weapon perhaps escapes unwillingly and unknowingly, seems to me to sin when they kill a man. But these are not even customarily called homicides. The same in the *Questions on Leviticus*, [question 68, at c. 19]: § 1. When a man is justly killed, the law kills him, not you.

C. XLII. It is not he who compels to good, but he who compels to evil, who persecutes.

Likewise Pope Pelagius. Let not the vain speeches of men delay you, when they say that the church carries out persecution while she either represses the things that are committed or seeks the salvation of souls. The tellers of such a report err. No one persecutes except one who compels to evil. But he who either punishes an evil already done or prohibits it from being done does not persecute, but loves. For if, as they think, no one is either to be reproved from evil or drawn back to good, human and divine laws must necessarily be emptied, which, with justice counseling, establish both

punishment for the evil and rewards for the good. But that schism is evil, and that men of this kind ought to be oppressed even through external powers, both the authority of canonical Scripture and the truth of the rules of the fathers teach us. Therefore, whoever has been separated from the apostolic sees is without doubt in schism, and attempts to erect an altar against the universal church. § 1. But let your Glory consider what the canon inserted in the Council of Chalcedon establishes concerning such persons, where, after other things, it says thus: "He who withdrew himself from communion, made an assembly, established an altar, and refused to consent to the bishop when he called, and refused to acquiesce in or obey the same man when he called a first and a second time—let him be condemned altogether, never merit even prayer, nor be able to receive honor. But if he persists in making disturbances and seditions within the church, let him be restrained as seditious through an external power." § 2. And blessed Augustine says concerning such persons: "Many things are also to be done in the case of persons who are unwilling and are to be punished with a certain benign harshness, whose advantage is to be consulted rather than their will. For in correcting a son, however harshly, paternal love is never lost; nevertheless, that which he would not wish is done so that he may suffer pain who, even unwilling, appears to be healed by pain." Behold, you see how, by the testimony of so great a father, the church does not persecute by restraining such things, but always loves such persons by amending them. Therefore, you too do what we, knowing the intention of your Christianity, frequently exhort, and take pains that such things not be permitted to be done further, but also—which I do not doubt to be very easy for you—that those who have presumed to do such things be directed under fitting guard to the most pious prince. § 3. For your Loftiness ought to recall what God did through you at that time when, with the tyrant Totila possessing both Istria and Venetia and the Franks also laying waste all things, you nevertheless did not permit a bishop of Milan to be made before you had reported the matter to the most merciful prince, and had learned again from his writings what ought to have been done, and amid enemies raging everywhere, both he who was being ordained and he who was to ordain were nevertheless conducted to Ravenna by the providence of your Highness.

C. XLIII. Let the powers of the age restrain schismatics and heretics.

The same to Narses, Patrician [and Duke in Italy]. What shall I say of the bishops of the Ligurians, Venetians, and Istrians? Your Excellency is capable of repressing them both by reason and by power, yet you allow them, in contempt of the apostolic sees, to glory in their rusticity, although, if perhaps anything concerning the judgment of the universal synod that was held at Constantinople during the first indiction recently passed was moving them, they ought to have sent to the apostolic see—as was always done—certain persons chosen from among their own who could give and receive an account, and not, with closed eyes, tear apart the body of Christ our Lord, that is, the holy church. Therefore, do not hesitate to restrain men of this kind by princely or judicial authority, because the rules of the fathers specially established this: that if any person of ecclesiastical office resists the person to whom he is subject, or assembles separately, or erects another altar, or creates a schism, that person is to be excommunicated and condemned. But if perhaps he despises even this and persists in making divisions and schisms, let him be oppressed through the public powers. Behold, lord, because your spirit is perhaps timid lest you appear to persecute, I have taken care briefly to direct these things to you from the authority of the fathers, although there are a thousand other examples and constitutions by which it is evidently recognized that those who create rifts in the holy church ought

to be restrained through the public powers not only by exiles, but also by confiscation of property and harsh custody.

C. XLIV. Let those divided from the unity of the church be restrained by secular powers.

The same. With what judgment we rejoice over the zeal of your Glory, we believe not only you but many and almost all persons to have knowledge; and for that reason we have now considered that we ought confidently to complain before your Glory concerning those things which, with you present there, we are astonished to see being done. For Tertius and Maximilian, having only the names of bishops, are said both to disturb ecclesiastical unity there and to apply all ecclesiastical property to their own uses, to such an extent that certain persons, compelled by necessity, came indefatigably to us over so long a journey and offered petitions against one of them, namely Maximilian. For this reason we have considered that Peter, presbyter of our see, and also Projectus, a notary, ought to be sent to those same places, so that they may either check there with worthy vengeance the things they shall discover to have been committed by the aforesaid pseudo-bishops against the canonical statutes, or conduct those same men all the way to us. And therefore, greeting your Glory with paternal affection, we ask that you furnish assistance in all things to the aforesaid persons who were directed from our see, and do not think it to be any sin if men of this kind are restrained. For both divine and human laws have established this: that those divided from the unity of the church and most iniquitously disturbing its peace are to be restrained even by secular powers. Nor is there anything greater from which you can offer a sacrifice to God than if you arrange that those who rage to their own destruction and that of others ought to be checked with fitting rigor.

C. XLV. The iniquity of the depraved, although it profits the good, is nevertheless to be punished.

Likewise Pope Pelagius, [to John the Patrician]. Reading again the letters of your Excellency, we indeed grieved greatly over the injury that the presumption of iniquitous men inflicted upon you. But because we know that, by the hidden judgment of God, your soul, even if through the iniquity and pride of others, was guarded from the contamination of schism, we gave thanks to almighty God, who is accustomed to work good things even from the evil acts of men. For it is not to be believed that it happened without his providence that senseless and most perverse men should leap forward even to this point: that, believing their division to be the Catholic Church, they prohibited you from their own pollution. For thus through the mercy of God it also came about, while they were ignorant, that, rescued from the communion of schismatics, it befell you to be preserved for the Catholic Church, which you love. Therefore, although your advantage was produced through their crime, nevertheless do not permit the presumption of iniquitous men to run riot unpunished. For if that which they presumed against your Glory has not been checked by vengeance, it ought no longer to be doubted what they may have power to inflict upon lesser persons. Therefore, exercise the authority owed in such matters and, lest their hope of committing such things further increase, let it be repressed by your coercions. For by God's nod they presumed such things even against you for this purpose: that, with you correcting such things, by God's favor you might be able to fortify others against their crime. But what kind of men those who flee the church are, the crimes of Euphrasius—which God willed no longer to remain hidden—evidently inform you: he who, in homicide, considered neither the bond of a human being, nor the charity of a brother, nor reverence for the

priesthood. But in incestuous adultery he even took away the measure from vengeance itself, because if you punish the adultery, there remains nothing in which the incest may be avenged; if you inflict punishment upon the incestuous act, the crime of adultery will remain unavenged. Behold the fellowship from which come those who, as regards their pride, attempted to inflict injury upon you, and, as regards the providence of God, preserved you undefiled for the church. Remove such persons from that province; use the occasion offered to you by God for oppressing the faithless. This will be able to be done more fully if the authors of the crimes are directed to the most merciful prince, and especially the invader of the church of Aquileia, who, both in schism and accursed in it, will be able to retain neither the honor nor the merit of a bishop.

C. XLVI. In the contest that is waged against unbelievers, whoever dies merits the heavenly kingdom.

Likewise Nicholas to the army of the Franks. We wish the charity of all of you to know that whoever —which we say without wishing it—shall have died faithfully in this contest of war, the heavenly kingdoms will by no means be denied to him.

C. XLVII. Those who are armed against excommunicated persons from zeal for mother church are not homicides.

Likewise Urban II to Godfrey, bishop of Lucca. Impose upon the killers of excommunicated persons—as you have learned in the order of the Roman church—a measure of fitting satisfaction according to their intention. For we do not judge those men homicides who, burning with zeal for the Catholic mother against excommunicated persons, happen to have slaughtered some of them. Nevertheless, lest the discipline of the same mother church be abandoned, enjoin upon them, according to the tenor we have stated, a fitting penance by which they may be able to appease toward themselves the eyes of divine simplicity, if perhaps through human frailty they incurred some duplicity in that same crime.

C. XLVIII. The peace of the church consoles sorrow for the lost.

Likewise Augustine, [epistle 50] to Boniface. For who among us would wish any of our enemies not only to perish but even to lose something? But if the house of David did not merit to have peace otherwise than if Absalom his son were extinguished in the war that he was waging against his father —although with great care he commanded his men that, so far as they could, they preserve him alive and safe, so that there might be one whom paternal affection could pardon when repentant—what remained for him except to weep for the one lost and, when the peace of his kingdom had been acquired, to console his sorrow? GRATIAN. Therefore, if holy men and public powers waging wars were not transgressors of that command, "You shall not kill," although they destroyed certain flagitious persons by a deserved death; if a soldier obeying his power is not guilty of homicide if he kills any flagitious person at its command; if to punish homicides and poisoners is not the shedding of blood but the ministry of the laws; if the peace of the church consoles sorrow for the lost; if those who, inflamed by zeal for the Catholic mother, kill excommunicated persons are not judged homicides: it is plain that it is lawful not only for the evil to be scourged but even to be killed. § 1. But it is asked: if it happens that certain evil persons are punished by those who do not possess lawful power, are those through whom they are punished guilty of shed blood? Concerning them Ambrose writes thus, [Book II *On Cain and Abel*, c. 4]:

C. XLIX. Sins are sometimes punished through peoples aroused by divine command.

Sins are remitted through the word of God, whose interpreter and a certain executor the Levite is. They are remitted through the office of the priest and sacred ministry. Sins are also punished through men, as through judges who use power for a time. § 1. Sins are also punished through peoples, as we read that the Jewish people were often subdued by foreigners aroused at God's command on account of offense against the divine majesty. GRATIAN. From this it is to be noted that God sometimes punishes sins through those who do not know, and sometimes through those who know. He punishes sins through those who do not know, as through Sennacherib, Nebuchadnezzar, Antiochus, the princes of the Romans, and certain kings of the gentiles he sometimes afflicted and sometimes took captive the sinning people of Israel. § 1. Hence the Lord himself says through the Prophet: "Assyria is the rod of my fury; but he himself did not know." Assyria was the rod of the Lord's fury because through it divine justice arranged to scourge innumerable nations. But he himself did not know, because, raised up in pride, he attributed the victory that he had obtained not to divine power but to his own strength. Hence against his pride the Lord speaks, saying: "Will the saw glory against him who cuts with it? Or will the axe be exalted against him who hews with it?" By these similitudes it is shown sufficiently clearly that, just as a saw and an axe can neither cut nor hew wood unless they are directed by another and therefore ought not to be proud against the one directing them, so those through whom God punishes are able to do nothing without the nod of the divine disposition and therefore it is not lawful for them to be proud against the one directing them. § 2. Such persons are said to serve God in that they punish; but in that, ignorant that they are ministers of God's wrath, they are proud with impious vanity, they find from God only a temporal reward for their service, but do not escape the punishment of their pride. Hence, when the Lord said to the Prophet concerning Nebuchadnezzar, "What shall I give him for the labor by which he served me at Tyre?" he immediately added: "Give"—that is, announce that it has been given to him—"Egypt and Ethiopia." But when, afterward growing proud in his heart, he said, "Is this not Babylon, which I founded in the strength of my kingdom? etc.," God immediately changed his rational mind and clothed him with bestial savagery, so that, fleeing from men, he lived with beasts. § 3. Through Antiochus also, when the Lord was punishing the idolatry of the Jewish people and turning to their destruction the peace that they were seeking from casting aside God's law and taking up the sacred rites of the nations, because, ignorant of God's disposition, he attributed the devastation of that people to his own ability, the Prophet imprecates against him, saying: "Pour out your wrath upon the nations that have not known you, and upon the kingdoms that have not invoked your name, lest perhaps they say among the nations: Where is their God?" § 4. Similarly, when God had decreed to punish through the Romans the sin of Christ's death, they began to ascribe the destruction of the city and the wretched captivity of the Jewish people to their own strength. Hence the Prophet imprecates against them, saying: "Raise your hands against the prides of those who hate you," and who, having maliciously worked many things, placed the monuments of their victory in the midst of your court. § 5. Sins are punished through those who know, as through the sons of Israel God willed to punish the sins of the Amorites, Canaanites, and other nations whose land he gave to the Israelites to possess, to whom he also commanded that they spare none of them but hand all over to death. That this happened to them on account of their sins appears from the words of the Lord, who, when he said to Abraham, "To your seed I shall give this land," and, as though he asked, "Why do you not give it to me now?"

heard: "For the sins of the Amorites have not yet been completed." They are understood to have been completed at the time when that people, freed from Egyptian servitude, received their land as an inheritance, as had been promised to Abraham. § 6. Therefore, when peoples are thus aroused by divine command to punish sins, as that Jewish people was aroused to occupy the land of promise and to destroy the sinful nations, guilty blood is shed without fault, and the things possessed evilly by them rightly pass into the right and dominion of the good. § 7. But when some persons are moved by a hidden prompting to persecute the evil, like Sennacherib and the others who persecuted the sinning people, although by the operation of a hidden prompting they are incited to persecute through the merits of those persons, nevertheless, because with a depraved intention they seek not to punish the sins of the offenders but to seize their goods or subject them to their dominion, they are not immune from crime. Concerning them it is also to be noted that they are sometimes aroused to punish the sins of the good, so that at last, through the good having been corrected, they themselves may also be punished; as it is read in the Book of Judges concerning Jabin, king of the Canaanites, and the Midianites, that on account of the idolatry of the people God raised them up to afflict Israel and occupy their land. But when the people of God, afflicted for a longer time under their hands, recognized their sin and appeased God toward themselves through penance, at God's command Barak, accompanied by Deborah the prophetess, wife of Lapidoth, crushed Jabin, king of the Canaanites, and Sisera, leader of his army; and Gideon handed over to death Zebah and Zalmunna, kings of the Midianites, and Oreb and Zeeb, their leaders. § 8. It therefore appears that sometimes through those bearing lawful power, sometimes through peoples aroused by divine command, the evil are not only scourged for their sins but also rightly destroyed. Nor is that passage of Augustine contrary in which, pleading with Marcellinus for the Circumcellions, he asked that he restrain them with blows, not destroy them by death. For although by pleading he asked that a span of life be reserved for them, nevertheless he did not teach that the severity of the laws by which such persons are punished by death is not to be observed.

Question VI

GRATIAN. But as to what is asked—whether the evil are to be compelled to good?—the answer readily appears. For the ancient people were compelled to the observance of the law by fear of punishments. In the Gospel also the Lord says to his disciples: "Do not fear those who kill the body but cannot kill the soul; rather fear him"—that is, serve him in fear—"who can destroy soul and body in Gehenna." Paul too, when he was persecuting the church of God, was compelled to be converted to God after being blinded on the way. Hence he testified that he was like one untimely born, saying: "But last of all, as though to one untimely born, he appeared also to me." Hence Augustine writes, [epistle 50] to Boniface:

C. I. The church ought to compel the evil to good, just as Christ compelled Paul.

Schismatics say: upon whom did Christ inflict force; whom did he compel? Behold, they have the Apostle Paul. Let them recognize in him Christ first compelling, afterward teaching; first striking, afterward consoling. But it is wonderful how he who entered the Gospel compelled by punishment of the body labored more than all those who were called into the Gospel by the word alone; and the perfect charity of him whom a greater fear compelled to charity casts fear outside. Why, therefore,

should the church not compel her lost sons to return, if lost sons compelled others to perish? Although the pious mother embraces more tenderly even those whom they did not compel but only seduced, if through terrifying and salutary laws they are recalled into her bosom, and rejoices much more over them than over those whom she had never lost. § 1. Or does it not pertain to pastoral diligence also to recall to the Lord's sheepfold, by terrors or even pains of scourges if they should wish to resist, those sheep that were not violently snatched away but, gently and softly seduced, had wandered from the flock and had begun to be possessed by strangers? Likewise: § 2. We show that Paul was compelled by Christ. And so the church imitates her Lord in compelling these persons, she who, before compelling anyone, waited for the prophetic preaching concerning the faith of kings and nations to be fulfilled. § 3. From this too that apostolic sentence is understood not absurdly, where blessed Paul said: "Ready to avenge all disobedience, when first your obedience shall have been fulfilled." § 4. Hence the Lord himself also first orders guests to be brought to his great supper, and afterward to be compelled. For when his servants had answered him, "Lord, what you ordered has been done, and still there is room," he said: "Go out into the ways and hedges, and whomever you find compel to enter." Therefore, in those who were first brought gently, the prior obedience was fulfilled; but in those who are compelled, disobedience is restrained. Likewise: § 5. If, through the power that the church received by divine gift through the religion and faith of kings at the time when she ought, those who are found in the ways and hedges—that is, in heresies and schisms—are compelled to enter, let them not reproach the fact that they are compelled, but attend to that to which they are compelled.

C. II. Those who err are corrected by the Lord in various ways.

The same to the Donatists, [epistle 166]. "That which had strayed," says the Lord, "you did not recall; and that which had perished, you did not seek." God himself does this to you through us: he himself by entreating, he himself by threatening, whether by correction, or by losses, or by labors, or through his hidden admonitions or visitations, or through the laws of temporal powers.

C. III. It is not to be considered that each person is compelled, but to what he is compelled.

The same in the epistle [48] to Vincentius. You see, as I think, that it is not to be considered that each person is compelled, but what that is to which he is compelled, whether good or evil—not because anyone can be good unwillingly, but, by fearing what he does not wish to suffer, he either abandons the animosity that impedes him or is compelled to recognize the truth that was unknown, so that, fearing, he may either reject the false thing concerning which he was contending or seek the truth that he did not know, and now willingly hold what he did not wish. Likewise: § 1. My opinion at first was that no one was to be compelled to the unity of Christ; that the matter was to be conducted by the word, fought by disputation, and conquered by reason, lest we have feigned Catholics whom we had known as open heretics. But this opinion of mine was overcome not only by the words of those contradicting, but by the examples of those demonstrating. For first my own city was set against me, which, although it was wholly on the side of Donatus, was converted to Catholic unity by fear of the imperial laws, and which we now see detesting the ruin of this animosity of yours in such a way that it is believed never to have been in it. So too many other cities were recalled to me by name, so that from the things themselves I might recognize that even in this cause that which is written can be rightly understood: "Give an occasion to the wise man, and he will be wiser."

C. IV. Let a peasant be compelled to be converted to the Lord by the burden of rent.

Likewise Gregory to Bishop Maximian. But now, if a peasant shall have been found to possess such great unbelief and obstinacy that he by no means consents to come to the Lord, he is to be burdened with so great a burden of rent that by the very punishment of its exaction he may be compelled to hasten to rectitude. GRATIAN. From all these things it is gathered that the evil are to be compelled to good. § 1. But it is objected that no one is to be compelled to that to which he is compelled without benefit. Yet each person is compelled to good without benefit when God spurns compelled services. Hence the Apostle, when he exhorted the Corinthians to alms, said: "Let each person give according as he has determined in his heart, not from sorrow or from necessity. For God loves a cheerful giver." From this it is given to be understood that he who gives unwillingly on account of present shame loses both the property and the merit. Likewise, when he rendered the reason why he abstained from expenses, he said: "If I shall have evangelized from necessity, there will be no glory for me." § 2. Likewise: "If I shall have evangelized unwillingly, a stewardship has been entrusted to me. But if I do this willingly, I have a reward with God." Likewise, when he wrote to the Galatians that the legal observances are not to be maintained, he said: "If you are led by the Spirit, you are not under the law." From this it appears that he who is under the law—that is, who serves from fear of punishment and not from love of justice—is not led by the Holy Spirit. But if he is not led by the Spirit, he is by no means able to please God. § 3. Likewise: "You did not receive the spirit of servitude again in fear, but you received the spirit of adoption as sons, in whom we cry: Abba, Father." From these words it is given to be understood that, even if in the Old Testament men were compelled to good by fear of punishment, nevertheless in the New Testament they are to be invited to faith by freedom alone and love of justice. Hence the former are called servants and sons of the bondwoman, pertaining to Ishmael; the latter are called free and sons of the free woman, pertaining to Isaac. § 4. Likewise John in his epistle: "Fear is not in charity, but perfect charity casts fear outside." But he who is compelled is led by that fear which is not in charity, which restrains the hands but does not change the mind, by which punishment is feared but the good is not loved. Moreover, without love of the good no one will be able to please God or be numbered among the good. Hence, when the Prophet said, "Your animals will dwell in it," namely the inheritance, showing how they may arrive at that habitation, he adds: "In your sweetness, which you prepared for the poor," calling the delight of a good work "sweetness," by which good is done not from fear of punishment but from delight in justice. Therefore, since without this sweetness the animals do not dwell in the inheritance, it is plain that no one is compelled to good by fear alone except without benefit. For whoever is compelled to good is led by fear alone, not by love; therefore, the evil are not to be compelled to good. § 5. To these things answer is made thus: If the evil were always to tolerate unwillingly the good to which they are compelled, and never serve willingly, they would be compelled to it without benefit. But because it belongs to human nature both to abhor those things that are brought into disuse and to love accustomed things more, the evil are to be restrained from evil by the scourges of tribulations and provoked to good, so that, while through fear of punishment evil is brought into disuse, it may be abhorred, but the good may grow sweet from custom. Hence Augustine on Psalm 127: "When through fear of Gehenna a man restrains himself from sin, a custom of justice is formed, and that which was hard begins to be loved, and fear begins to be excluded by charity, and chaste fear

succeeds, concerning which it is said here, by which we fear lest he delay, lest he depart, lest we be without him. The former is useful, but it does not remain eternally as does the latter."

Question VII

GRATIAN. But now it is asked whether heretics are to be despoiled of their own property and that of the church, and whether those who possess things taken from heretics are said to possess another's property. Concerning these things Augustine writes thus to Vincentius, [epistle 48]:

C. I. Earthly things are held only by divine or human right.

Whoever persecutes you on the occasion of this imperial law, not from the love of correcting but from the hatred of acting as an enemy, displeases us. And although no earthly thing whatever can rightly be possessed by anyone except either by divine right, by which all things belong to the just, or by human right, which is in the power of the kings of the earth—and therefore you falsely call those things yours that you neither possess justly nor, according to the laws of earthly kings, are permitted to retain, and in vain you say, "We labor to gather them," when you read it written, "The just eat the labors of the impious"—nevertheless, whoever, on the occasion of this law that the kings of the earth serving Christ promulgated for amending your impiety, greedily seeks property belonging to you, displeases us. Finally, whoever holds not through justice but through avarice those very goods of the poor or basilicas of the congregations that you held under the name of the church—which assuredly are owed only to that church which is the true church of Christ—displeases us. Whoever receives in such a way a person cast down by you for some flagitious deed or crime as those are received who, apart from the error by which you are separated from us, lived among you without crime, displeases us. But you do not easily show these things either. We tolerate certain persons whom we cannot correct or punish; nor on account of the chaff do we abandon the Lord's threshing floor; nor on account of the bad fish do we break the Lord's nets; nor on account of the kids to be separated at the end do we desert the Lord's flock; nor on account of the vessels made unto dishonor do we migrate from the Lord's house.

C. II. Catholics do not therefore possess another's property because they hold things taken from heretics.

The same, *Against Petilian*, [Book II, c. 43]. If you complain concerning ecclesiastical property or places that you do not hold, the Jews too can call themselves just and charge us with iniquity because Christians now possess the place in which the impious reigned. What, therefore, is unworthy if Catholics hold according to the equal will of the Lord those things that heretics held? That voice of the Lord has force against all the iniquitous and impious: "The kingdom of God will be taken from you and given to a nation that practices justice." Or was it written in vain, "The pious will eat the labors of the impious"? Therefore, you ought rather to marvel that you still hold something than that you have lost something. Likewise, [c. 59]: § 1. If you who have now been cut off began to possess any things, because the Lord gave to us the things taken from you, we do not therefore covet another's property, because by the command of him to whom all things belong they were made ours, and they are justly ours. For you used them for severance; we, for unity. Otherwise, those who were expelled by divine power from the face of those who used that land evilly could charge the first people of God too with coveting another's property; and the Jews themselves, from whom the

kingdom was taken according to the words of the Lord and given to a nation that practices justice, can charge the coveting of another's property because the church of Christ possesses the place where the persecutors of Christ reigned.

C. III. Ecclesiastical property is unjustly possessed by heretics.

The same, [epistle 50 to Boniface]. But as to what they charge against us—that we covet and take away their property—would that they become Catholics and possess in peace and charity with us not only the things that they call theirs but also ours. But to such an extent are they blinded by the desire to make false accusations that they do not attend to how contrary to one another are the things they say. Surely they themselves say, and appear to complain most odiously concerning themselves, that we confine them in our communion by the violent command of the laws. We would in no way do this, therefore, if we wished to possess their property. What avaricious man seeks a co-possessor? What person inflamed by the desire to dominate or raised up by the haughtiness of domination desires to have a partner? Surely let them attend to those formerly their own but now also our companions and joined to us by fraternal love: how they hold as their own not only the things they had but also ours, which they did not have—things that, nevertheless, if we are co-sharers with the poor, are both ours and theirs. But if we privately possess things that suffice for us, those things are not ours but the poor's; we in some way conduct their administration, not claim ownership for ourselves by a damnable usurpation. Therefore, whatever they possessed in the name of the churches of Donatus's party, Christian emperors by religious laws ordered to be transferred, together with the churches themselves, to the Catholic Church. Therefore, since the peoples of those same churches are with us, and with us are the poor who were fed from those same little possessions, let those who are placed outside rather cease to covet another's property, but let them enter the fellowship of unity, so that together we may govern not only the things that they call theirs but also the things that they call ours. For it is written: "All things are yours, but you are Christ's, and Christ is God's."

C. IV. He who is cut off from the body of Christ cannot retain the spirit of justice.

The same in the epistle to Vincentius. Just as a limb, if it is cut off from the body of a living man, cannot retain the spirit of life, so a man who is cut off from the body of the just Christ can in no way retain the spirit of justice, even if he retains the form of the limb that he received in the body. But let them come into the joining together of this body and possess their labors not from the desire to dominate but from the piety of using them well. But we, as has already been said, purge our will from the filth of this desire, with any enemy as judge, when, so far as we are able, we seek those very persons whose labors they are said to be, so that with us in Catholic fellowship they may use both theirs and ours. § 1. "But this," they say, "is what moves us: if we are unjust, why do you seek us?" To them we respond: we seek you, the unjust, lest you remain unjust; we seek the lost so that we may be able to rejoice over those found, saying: "The brother was dead and has revived; he had perished and has been found." "Why, then," he says, "do you not baptize me, so that you may wash me from sins?" I answer: because I do not inflict injury upon the emperor's character when I correct the deserter's error. "Why," he says, "do I not at least perform penance among you?" Rather, unless you perform it, you will not be able to be saved. For how will you rejoice that you have been corrected unless you grieve that you were perverse? "What, then," they say, "do we receive among you when we pass over to you?" I answer: indeed, you do not receive baptism, which could be

present in you outside the joining together of the body of Christ but could not profit you; but you receive the unity of the Spirit in the bond of peace—without which no one will be able to see God—and charity, which, as it is written, covers a multitude of sins. § 2. But if we consider what is written in the Book of Wisdom, "Therefore the just carried away the spoils of the impious," and likewise what is read in Proverbs, "But the riches of the impious are stored up for the just," then we shall see that it is not to be asked who possesses the property of heretics, but who are in the fellowship of the just. Likewise after some things: § 3. If the body of Christ carries away the spoils of the impious, and the riches of the impious are stored up for the body of Christ, the impious ought not to remain outside so that they may make false accusations, but to enter so that they may rather be justified. Likewise after some things: § 4. Therefore, let them come into the joining together of Christ's body and possess their labors not from the desire to dominate but from the piety of using them well. But we, as has already been said, have purged our will from the filth of this desire, with any enemy as judge, when, so far as we are able, we seek those very persons whose labors they are said to be, so that with us in Catholic fellowship they may use both theirs and ours. GRATIAN. Therefore, by these authorities it is clearly shown that the things that are possessed evilly by heretics are justly taken from them by Catholics, and that Catholics are not therefore said to possess another's property.

Question VIII

GRATIAN. PART I. But concerning bishops or any clerics, that they are able to take up arms neither by their own authority nor by the authority of the Roman Pontiff is easily proved. For when Peter, who had been chosen first of the Apostles by the Lord, wielded the material sword in order to defend his master from the injury of the Jews, he heard: "Turn your sword into its sheath, for everyone who shall have taken up the sword will perish by the sword," as though it were openly said to him: "Until now it was lawful for you and your predecessors to persecute the enemies of God with the bodily sword; henceforth, as an example of patience, turn your sword—that is, the one granted to you until now—into its sheath, and wield only the spiritual sword, which is the word of God, in the slaughter of the old life." For everyone apart from that man, or the authority of him, who uses lawful power—who, as the Apostle says, does not bear the sword without cause, to whom also every soul ought to be subject—everyone, I say, who shall have taken up the sword apart from his authority will perish by the sword. § 1. Likewise Ambrose: "The weapons of a bishop are tears and prayers." Likewise that saying of the Apostle, "Not defending yourselves, dearly beloved," although it is said generally to all, is nevertheless understood to have been said specially to prelates. [PALEA. Hence Pope John VIII, excusing Bishop John from military service, says to the Empress Engelberga:

C. I. On the same matter.

He assuredly fears exceedingly, and rightly dreads, to perform secular military service contrary to the profession of his order. To defend the land, to treat of battles and arms, belongs to the earthly power.]

[PALEA.

C. II. On the same matter.

Likewise Pope Innocent. When the Lord, he says, was being seized by the Jews, and Peter cut off the ear of a certain disobedient man, he prohibited striking and, as the model of all priests—of whom he

was the first—prohibited taking up carnal arms even for himself.]

[PALEA.

C. III. On the same matter.

Likewise Ambrose. The soldiers of Christ do not seek iron javelins, do not seek arms. When compelled to fight back, I did not know how; but sorrow, weeping, prayers, and tears were my weapons against the soldiers. For such are the fortifications of a priest. Otherwise I neither ought nor am able to resist; but I am not accustomed to flee and abandon the church. Not bodily guard, but the providence of the Lord, is accustomed to enclose a servant of Christ.] GRATIAN. Hence also concerning those who die in war or in a brawl, it was established thus in the Council of Tribur:

C. IV. For a cleric who dies in war or in a brawl, prayer or oblation is not to be offered.

Whatever cleric shall have died either in war, or in a brawl, or in the games of gentiles, let no petition be made for him either in the oblation or in prayer, but let him fall into the hands of the judge; nevertheless, let him not be deprived of burial.

C. V. Let clerics who voluntarily take up arms be thrust into a monastery after losing their grade.

Likewise from the [Fourth] Council of Toledo, [c. 44], concerning clerics bearing arms. Clerics who shall be found willingly to have taken up arms in any faction, after losing the grade of their order, are to be handed over perpetually to a monastery.

C. VI. Clerics bearing military arms are to be punished by loss of their own grade.

Likewise from the Council of Meaux, [c. 37]. Whoever are seen to be of the clergy are not to take up military arms or proceed armed, but are to exhibit the designation of their profession by religious morals and religious dress. But if they disdain this, as despisers of the sacred canons and profaners of ecclesiastical authority they are to be punished by loss of their own grade, because they cannot serve as soldiers for God and the age at the same time. PART II. GRATIAN. To these things answer is made thus: priests ought not to take up arms with their own hand, but it is lawful for them to exhort others to take them up for the defense of the oppressed and the assault upon the enemies of God. Hence Leo IV writes to Emperor Louis:

C. VII. On account of the Saracens, the Pope orders the people to be assembled and to meet them at the seashore.

Therefore, since adverse reports frequently arrive from the regions of the Saracens, certain persons were saying that Saracens would come secretly and furtively into the port of the Romans. On this account we ordered our people to be assembled, decreed that they descend to the maritime shore, and departed from Rome.

C. VIII. The Pope ought to be the avenger and principal helper of his flock.

Likewise. You ought to know that we never suffer our men to be oppressed by anyone; but if any necessity shall occur, we avenge them in person, because we ought in all things to be the avengers

and principal helpers of our flock.

C. IX. He who dies in defense of Christians obtains the heavenly kingdom from God.

The same to the army of the Franks. Having laid aside every fear and terror, strive to act manfully against the enemies of the holy faith and the adversaries of all religions. For the Almighty knows, if any one of you dies, that he died for the truth of the faith, the salvation of the fatherland, and the defense of Christians; therefore, he will obtain the heavenly reward from God.

C. X. At the prayers of Pope Hadrian, Charles undertook war against the Lombards.

Likewise Alcuin. King Charles, prevailed upon by the exhortation and prayers of Hadrian, bishop of the city of Rome, undertook war against the Lombards—a war that previously, with the Pope entreating, had indeed been undertaken by his father too with great difficulty.

C. XI. We ought not to persecute the Jews, but the Saracens.

Likewise Pope Alexander [II] to all the bishops of Spain. The cause of the Jews and that of the Saracens are plainly unlike. For war is justly waged against the latter, who persecute Christians and drive them from cities and their own dwelling places; the former are everywhere prepared to serve.

C. XII. He who does not correct crimes that he can amend commits them himself.

Likewise John VIII to the glorious Duke Demago. Moreover, we exhort the zeal of your devotion that you be inflamed the more vehemently against the petty sea-robbers who rage against worshipers of Christ under the pretext of your name, the more you recognize that the reputation of your name has been darkened by their depravity; for although it can be believed that they lie in ambush for those sailing against your will, nevertheless, because they are said to be able to be restrained by you, unless you check them, you will not be held innocent.

For it is written: “He who does not correct crimes that he can amend commits them himself.”

C. XIII. To punish crimes for God is not cruelty but piety.

Likewise Jerome to Riparius, [against Vigilantius]. I have read of the lance of Phinehas, the sternness of Elijah, the zeal of Simon the Canaanite, the severity of Peter slaying Ananias and Sapphira, and the constancy of Paul, who condemned Elymas the magician, resisting the ways of the Lord, to perpetual blindness. To punish crimes for God is not cruelty but piety. Hence it is also said in the law: “If your brother, and your friend, and the wife who sleeps in your bosom should wish to turn you away from the truth, let your hand be upon them, and you shall shed their blood.”

C. XIV. Certain things were lawful in the Old Testament that are now prohibited.

Likewise John Chrysostom on Matthew, homily XVII, [at c. 5]. Phinehas killed a man, and it was reckoned to him as justice. But Abraham, made not only a homicide but even a parricide—which certainly is graver—pleased God more. But Peter committed a double homicide; nevertheless, what was done was a spiritual work. Therefore, let us attend not only to the works but to the time, the

cause, and the will; let us also inquire most diligently into the difference of the persons and however many other things attended the works themselves. For we cannot otherwise arrive at the truth.

C. XV. When necessity presses, it is lawful to enter upon war even during the days of Lent.

Likewise Nicholas in the responses to the Bulgarians, [c. 46]. If no necessity presses, one must abstain from battles not only in the time of Lent but at every time. But if unavoidable urgency presses, without doubt the preparation of wars is not to be spared even in the time of Lent for the defense both of oneself and of the fatherland or of the paternal laws, lest, assuredly, a man appear to tempt God if he has something that he can do and does not take care to provide for his own salvation and theirs, and does not take precautions against losses to the holy religion.

C. XVI. Peter handed Ananias and Sapphira over to death by rebuking them.

Likewise Gregory in the *Dialogues*, [Book II, c. 30]. Peter, who raised the dead Tabitha by praying, handed Ananias and Sapphira, when they lied, over to death by rebuking them. For he is not read to have prayed for their destruction, but only to have rebuked the fault that they had perpetrated. It is therefore established that sometimes such things are exhibited from power, sometimes from entreaty, since by rebuking he took life away from these persons, and by praying he restored it to her.

C. XVII. Blessed Gregory exhorts certain persons to assemble soldiers and manfully prepare arms against the enemies.

The same to Velox, Master [of the Soldiers], [Book XII, epistle 21]. Previously we also notified your Glory that soldiers had been prepared to come there; but because your letter had signified that the enemies had been assembled and were ranging here, this cause detained them here. But now it has seemed useful that some soldiers be sent there. Let your Glory take care to admonish and exhort them to be prepared for labor; and, when an occasion has been found, speak with our glorious sons Mauricius and Vitalianus, and do whatever, with God as helper, they persuade you is for the advantage of the commonwealth. And if you learn that the unspeakable Arnulf is making an incursion here or toward the regions of Ravenna, labor at his rear, as befits strong men, so that your reputation may, with God's aid, advance further in the commonwealth according to the quality of your labor. Nevertheless, before all things we admonish you to release without any delay or excuse the household of Aloyn, Adobin, Vigild, and Grussing, who are known to be with the glorious master of the soldiers Mauricius, so that, when the aforesaid men come there, they ought to march with them without any impediment.

[C. XVIII.]

Likewise the same to Mauricius and Vitalianus, [Book XII, epistle 23]. Through our son Vitalianus, with whom you had also deliberated, we humbly commanded your Glory both by word and in writing. But on the eleventh day of the month of June Arnulf sent this letter that we directed to you; and therefore, reading it again, see whether the inhabitants of Suana have persisted in the fidelity that they promised to the commonwealth, and receive from them worthy hostages in whom you can trust, and in addition bind them anew by oaths, returning to them what you took in the place of a pledge and healing them by your words. But if you learn most manifestly that they spoke with Arnulf concerning their subjection, or certainly gave hostages to him—as Arnulf's letter that we directed to

you has rendered us doubtful—then, considering the matter with salutary counsel, lest your soul or ours be burdened in any respect concerning the oaths, perform whatever you judge useful to the commonwealth. But let your Glory act in such a way that there is neither anything for which we can be reproved by the adversaries, nor is the advantage of the commonwealth—which may the Lord avert—neglected. Moreover, glorious sons, be solicitous, because, so far as I have learned, the enemy has a multitude assembled and is said to reside at Narina; so that, if with God angry with him he should wish to direct his course here, either plunder his places—so far as the Lord shall assist you—or certainly let the scouts whom you send search carefully, lest, angered by what has been done, he range against you. GRATIAN. It is also read in the register that blessed Gregory commanded the citizens of Tuscany to prepare arms against the Lombards and decreed stipends for those serving as soldiers. Therefore, from this example and the preceding authorities, it is clear that although priests ought not to take up arms with their own hand, nevertheless they are able either to persuade those to whom offices of this kind have been committed, or by their authority to command any persons, to take them up. PART III. § 1. But that saying of Nicholas to Emperor Charles is objected:

C. XIX. Bishops ought not to be occupied with military affairs.

It is established to be exceedingly reprehensible that you added, saying that the greater part of all the bishops keep watch day and night with your other faithful men against maritime pirates, and that for this reason the bishops are impeded from coming, since it belongs to Christ's soldiers to serve Christ, but let the soldiers of the age serve the age, as it is written: "No one serving as a soldier for God entangles himself in secular affairs." But if the soldiers of the age devote themselves to military service, what pertains to bishops and Christ's soldiers except that they be free for prayers?

C. XX. Let bishops fear to involve themselves in the death of any man.

Likewise Gregory, [Book VII, epistle 1, to Sabinianus]. If I had wished to involve myself in the death of the Lombards, today the nation of the Lombards would have neither king nor duke. But because I fear God, I fear to involve myself in the death of any man. GRATIAN. Behold, Pope Nicholas prohibits bishops from being occupied with secular military service and does not even permit them to approach battle against maritime pirates. How, therefore, does Pope Leo depart from the city against the Saracens and call the people together from every direction to keep them far from the shore, and personally avenge the injuries of his people, and, with Gregory, invite soldiers to arms? But it is to be noted that certain bishops are content with only the Levitical portion, who, just as they are numbered only in the lot of God, so receive God himself alone as an inheritance, saying: "The Lord is the portion of my inheritance." These have nothing in common with the princes of the age, because they cast temporal things entirely aside, lest on their occasion they be held liable to the laws of the emperors. No occasion for occupation in secular military service is left to such persons, because, since they live from tithes and first fruits, as sons of the highest king they are free from earthly exactions throughout every kingdom, so that they are able to say: "The prince of this world comes, and in us he has nothing." But there are others who, not content with tithes and first fruits, possess estates, villages, castles, and cities, from which they owe tributes to Caesar unless by imperial benignity they have merited immunity from things of this kind. To them it is said by the Lord: "Render the things that are Caesar's to Caesar, and the things that are God's to God." To them

the same Apostle says: "Render to all the things owed: tribute to whom tribute is owed; tax to whom tax." Hence Ambrose, [to his sister Marcellina, epistle 33]:

C. XXI. Let churches not be subject to emperors.

I myself am approached by counts so that through me a prompt surrender of the basilica might be made, saying that the emperor by his right had ordered that it ought to be surrendered, seeing that all things were in his power. I answered: if he sought from me what is mine—that is, my estate, my silver, anything of this kind that is mine—I would not resist, although all the things that are mine belong to the poor; but the things that are divine are not subject to imperial power. If he seeks the patrimony, invade it; if my body, I shall meet him. Do you wish to drag me into chains? Do you wish to drag me to death? It is a pleasure to me. I shall not fortify myself by a surrounding mass of peoples, nor shall I hold the altars while entreating for life; but I shall freely be sacrificed for the altars. For I shuddered in spirit when I learned that armed men had been sent to occupy the church's basilica, lest, while the people claimed the basilica, some slaughter occur that would come to the destruction of the whole city. I prayed that I might not survive the funeral pyre of so great a city, or rather of all Italy. And below: § 1. It is commanded: surrender the basilica. This is: "Speak some word against God and die"; and not only speak against God, but also act against God. It is commanded: surrender the altars of God. Therefore, we are pressed by royal commands, but we are strengthened by the words of Scripture, which answered: "You have spoken as one of the foolish women." And below: § 2. Why, therefore, are you disturbed? Willingly I shall never desert you; when compelled to fight back, I did not know how. I shall be able to grieve, I shall be able to weep, I shall be able to groan. Against arms and soldiers, even Goths, my tears are my weapons. For such are the fortifications of a priest. Otherwise I neither ought nor am able to resist. § 3. Would that I were secure that the church would by no means be handed over to heretics. I would gladly go to the emperor's palace, if this suited the office of a priest, so that I might contend in the palace rather than in the church. But in the council chamber Christ is accustomed to be not the accused but the judge. Who would deny that the cause of the faith is to be conducted in the church? If anyone is confident, let him come here. And below: § 4. It is alleged that all things are lawful for the emperor and that all things are his. I answer: do not burden yourself, emperor, by thinking that you have any imperial right over the things that are divine; do not exalt yourself, but if you wish to rule longer, be subject to God. It is written: "The things of God to God; the things of Caesar to Caesar." Palaces pertain to emperors; churches to priests. The right over the public fortifications has been entrusted to you, not the sacred things. Again it is said to me: "The emperor has commanded; I too ought to have one basilica." I answer: it is not lawful for you to have it. What have you to do with an adulteress? For she is an adulteress who is not joined to Christ in lawful marriage. And below: § 5. We know that Naboth, a holy man and possessor of his own vineyard, was assailed by a royal request that he give his vineyard, where the king, after the vines had been cut down, might sow cheap vegetables; and that he answered: "Far be it that I hand over the inheritance of my fathers." We know that the king was saddened because another's right was denied to him by a just reply, but, deceived by a woman's counsel, came into the field through death. For holy Naboth defended his vines even with his own blood. If he did not hand over his vineyard, shall we hand over the church of Christ? What, then, was answered contumaciously by me? For when approached, I said: "Far be it from me that I hand over Christ's inheritance." Naboth did not hand over his own; shall I hand over Christ's inheritance? But I

added this: “Far be it that I hand over the inheritance of Dionysius, who died in exile for the cause of the faith, the inheritance of Eustorgius the confessor, the inheritance of Mirocles, and of all the faithful bishops of earlier times.” I answered what belongs to a priest. Let the emperor do what belongs to the emperor. It is prior that he take away my soul rather than my faith. And below: § 6. Caesar’s tribute is not denied. The church belongs to God. Assuredly, it is not owed to Caesar, because God’s temple cannot be Caesar’s right. No one can deny that this was said with honor for the emperor. For what is more honorable than that the emperor be called a son of the church? What is said is said without sin; it is said with grace. For the emperor is within the church. A good emperor seeks the church’s aid; he does not reject it. And below: § 7. If something were exacted and sought from me—either an estate, or a house, or gold, or silver, that which belonged to my right—I would willingly offer it. From the temple of God I can neither take anything away nor hand it over. I received it to be guarded, not surrendered. Furthermore, I also take counsel for the emperor’s salvation, because neither would it be expedient for me to surrender it nor for him to receive it. Let him receive the voice of a free priest; if he wishes counsel to be taken for him, let him withdraw from injury to Christ. These things are full of humility and, as I judge, full of the affection that a priest owes to the emperor.

C. XXII. Churches pay tribute from their external things.

Likewise Pope Urban. Tribute was found in the mouth of the fish when Peter was fishing, because from her external things, which appear openly to all, the church renders tribute. But he was not ordered to give the whole fish, but only the stater that was found in its mouth, because neither can the church be given to the emperor nor can the pontifical summit, which is preeminent in the mouth of the head of the church, be subjected to kings. But assuredly, as we have said, that which is found in the fish’s mouth is ordered to be given for Peter and the Lord, because from the church’s external things that which was established of old is to be paid to emperors for the peace and quiet in which they ought to protect and defend us. PART IV. GRATIAN. Although even things of this kind do not appear to be subject to imperial exactions. For when, in a time of famine, Pharaoh bought for himself the land of all the Egyptians and under the same famine subjected all of them to his servitude, he furnished necessary things to the priests in such a way that they were stripped neither of possessions nor of liberty, the Lord proclaiming from that time that priests ought to be free in every nation. Hence Constantius and Constans gave this immunity to the church, saying:

[C. XXIII.]

“In any city, in any town or village, castle, or municipality, whoever by the vow of the Christian religion shall have made known to all the merit of exceptional and singular virtue, let him obtain perpetual security. We wish him always to rejoice and glory from faith, knowing that our commonwealth is sustained more by religions than by offices and bodily labor or sweat.” Valentinian and Valens also decreed, saying: § 1. “We decree that all those who are established to be guardians of churches or holy places and to serve religious observances are to sustain the harassment of no exaction.” Emperor Justinian: § 2. “We decree that property descending to venerable churches, guesthouses, monasteries, poorhouses, foundling homes, orphanages, homes for the aged, or any other fellowship of this kind from any curial liberality—whether made among the living, on account of death, or in last wills—is to be free and immune from registrations of lucrative acquisitions; the

law that was established concerning registrations of this kind retaining its force in the case of other persons, but, from regard for piety, mitigating its force in the ecclesiastical portion or that of other houses that have been assigned to these pious fellowships." Hence it is also read in the Council of Paris:

C. XXIV. A presbyter is not to be compelled to pay a tax from an ecclesiastical field.

According to canonical authority and the constitution of the lord Emperor Louis, from an ecclesiastical field and manse, from the bondsmen whom he himself designated in his capitularies, or if anyone has bestowed something upon a church for a place of burial, from the tithes and oblations of the faithful, let no one compel any of the presbyters to pay any tax, nor let anyone of any order or dignity subtract anything therefrom or exact any temporal repayment. But if he does this, let him be deprived of communion until satisfaction and be compelled by royal power to make restitution.

[PALEA.

C. XXV. Likewise from the Council of Worms, c. 50.

It was decreed that one entire manse be assigned to each church without any service, and that presbyters established in them render no service except ecclesiastical service from tithes, from the obligations of the faithful, from houses, from courtyards or gardens placed next to the church, or from the aforesaid manse. And if they have anything more, from it let them render the service owed to their superiors.] GRATIAN. From this it is given to be understood that from the things the church possesses by imperial benefice or from any persons for the benefit of burial, she is held bound to the right of no one except the bishop. But from the things that she shall have bought from any persons or received by donations of the living, she owes customary services to the princes, so that she both pays annual tributes to them and, when the army is summoned, sets out with them for the camps. Nevertheless, this very thing ought not to be done without the consent of the Roman Pontiff. Hence Pope Gelasius to Bishop Elpidius:

C. XXVI. Without the authority of the Roman Pontiff, bishops are not to dare to proceed to the imperial court.

With what audacity, with what rashness do you write in reply that you are preparing to proceed to Ravenna, when the canons evidently command that none at all of the pontiffs ought to hasten to the imperial court unless they have first seen and consulted us? How do you think lawful for you that which is not lawful, unless because you are hastening to be without this office, of which by these excesses you show yourself unworthy?

C. XXVII. Without the counsel of the metropolitan or the provincial bishops, bishops are not to proceed to the emperor.

Likewise from the Council of Antioch, [c. 11]. If any bishop, presbyter, or anyone at all who has been established under the ecclesiastical rule shall proceed to the emperor without the counsel or letters of those bishops who are within the province, and especially of the metropolitan, he ought to be removed and cast out not only from communion but also deprived of his own dignity, as troublesome and importunate to the imperial ears contrary to the ecclesiastical statutes. GRATIAN. Therefore, the Gallican bishops are reproved by Nicholas because, having despised apostolic authority, they had

chosen to follow arms rather than present themselves before the apostolic countenance. Although those proceeding to the imperial court can be understood not to have followed the emperor in order to assist him with arms, but to commend him with his army to God by daily prayers. In this case that authority of the Council of Sardica appears to speak, in whose eighth chapter Bishop Hosius is read to have said:

C. XXVIII. Let bishops who have not been called by religious emperors not approach the imperial court.

If it pleases you, dearest brothers, decree that bishops not approach the imperial court, except perhaps those who shall have been either invited or called by religious emperors. But because it often happens that those who suffer injury flee to the mercy of the church, and those who, having sinned, are condemned to exile or the islands, or certainly receive any sentence, it is therefore necessary to aid them, and without doubt indulgence is to be sought for them through the church. GRATIAN. Therefore, it is lawful for prelates of the church, by the example of blessed Gregory, to ask emperors or any dukes for defense for the faithful. It is also lawful, with blessed Leo, manfully to exhort any persons to their own defense against the adversaries of the holy faith, and to summon any persons to keep the force of unbelievers far away. But it is lawful for no bishop, by his own authority or that of the emperors, to command the shedding of blood. Hence in the Fourth Council of Toledo, [c. 30], it is read:

C. XXIX. Let priests consent to be made judges where pardon from punishment is promised by oath.

Princes often entrust their affairs against any persons guilty of an offense against majesty to priests. But because priests were chosen by Christ for the ministry of salvation, let them consent to be made judges by kings where indulgence from punishment is promised by oath, not where a sentence of peril is prepared. Therefore, if any of the priests, contrary to this common counsel, shall have stood forth as an examiner in dangers belonging to others, let him be guilty of shed blood before Christ and lose his own grade before the church.

C. XXX. Those who handle the sacraments of the Lord ought not to conduct a judgment of blood.

Likewise from the Eleventh Council of Toledo, [c. 6]. It is not lawful for those by whom the sacraments of the Lord are to be handled to conduct a judgment of blood. And therefore persons of this kind must be greatly prohibited from such excesses, lest, agitated by the impulses of indiscriminate presumption, they either presume by their own sentence to judge that which is to be punished by death, or themselves inflict mutilations upon any persons, or command them to be inflicted. But if anyone, forgetful of these precepts, should do such a thing either to the servants of his church or to any persons, let him be deprived of the honor and place of the order granted to him; let him also be held bound under the perpetual confinement of condemnation. Nevertheless, communion is not to be denied to him when departing from this life, on account of the mercy of the Lord, who does not will the death of the sinner, but that he be converted and live. GRATIAN. Others too are prohibited from carrying out mutilations of limbs and burnings of houses without judicial authority. Hence in the Decrees of Pope Eutychian:

C. XXXI. Let one who mutilates limbs or burns houses without judicial authority be excommunicated.

If anyone shall have carried out mutilations of limbs or burnings of houses, or ordered them to be done, or consented to the person doing them, until he shall have made amends for these things to each person legally or amicably before the bishop of the city and the other citizens, let him be separated from every fellowship of Christians as a gentile and a publican. PART VI. GRATIAN. Concerning incendiaries also Innocent II in a universal council, [c. 18], established generally, saying:

[C. XXXII.]

"By the authority of God and of the blessed Apostles Peter and Paul, we altogether detest and prohibit the exceedingly wicked, depopulating, and horrible malice of incendiaries. § 1. Therefore, if anyone after the promulgation of this prohibition of ours, from evil zeal, whether from hatred or for vengeance, shall set fire, cause it to be set, or knowingly furnish counsel or aid to those setting it, let him be excommunicated; and if the incendiary shall have died, let him lack Christian burial. Nor is he to be absolved unless first, after the loss that he inflicted has been repaired according to his means, he swears that he will not set fire further. But let a penance be given to him that he remain in the service of God at Jerusalem or in Spain for one complete year. But if any archbishop or bishop relaxes this, let him restore the loss and abstain from the episcopal office for one year. To be sure, after archbishops and bishops have been consulted, we do not deny kings and princes the ability to execute justice."

C. XXXIII. He who, not possessing a public function, kills or maims anyone is a homicide.

Likewise Augustine in the book *On the City of God*. "He who strikes evil men because they are evil, and has a cause for killing, is a minister of God. But he who, without any public administration, shall have killed or slaughtered an evildoer, thief, sacrilegious man, adulterer, perjurer, or any criminal, or shall have maimed him in his limbs, will be judged as a homicide, and all the more severely inasmuch as he did not fear abusively to usurp a power not granted to him by God." PART VII. GRATIAN. But concerning those who wound a man together, it is asked: if he shall have died, which of them incurs the guilt of homicide? Concerning these things it was established thus in the Council at Verberie:

C. XXXIV. If several persons fight against one, with what penalty each of them is to be struck.

If four or five men, or even more, shall have fought against one man, and, wounded by them, he shall have died, whoever among them inflicted a wound is to be judged a homicide according to the statutes of the canons; but let the others who attacked him, wishing to kill him, perform penance similarly. Let those who neither attacked nor wounded him, nor were collaborators by counsel or aid, but were merely present, be without guilt.

Causa XXIV

CAUSE XXIV.

GRATIAN. A certain bishop, having fallen into heresy, deprived some of his priests of office and marked them with a sentence of excommunication. Accused of heresy after his death, he is

condemned, together with his followers and his entire household. (Question I.) Here it is first asked whether one fallen into heresy can deprive anyone of office or mark him with a sentence. (Question II.) Second, whether anyone can be excommunicated after death. (Question III.) Third, whether an entire household is to be excommunicated for the sin of one person.

Question I

GRATIAN. That anyone cannot be deposed or excommunicated by a heretic is easily proved. For every heretic either follows a heresy already condemned or fashions a new one. But he who follows a heresy already condemned makes himself a participant in its condemnation. Hence, when Acacius complained that he had been condemned by the Apostolic See without synodal authority, Gelasius writes against him, saying:

C. I. He who falls into a heresy already condemned makes himself a participant in its condemnation.

Acacius was not made the inventor of a new error, but an imitator of an old one, and therefore it was not necessary that new decrees go forth against him, but only that the old ones be renewed. And so I was made the executor of an old constitution, not the promulgator of a new one. For whoever falls into a heresy once condemned envelops himself in its condemnation.

C. II. That which a synod once established against each heresy is not to be reconsidered.

The same, [in the epistle to the bishops of Dardania]. Our forebears, discerning by divine inspiration, necessarily took precaution that they not permit that which a synod, once assembled against each heresy, had promulgated for communion of faith and Catholic and apostolic truth to be mutilated afterward by new reconsiderations, lest an occasion be furnished to the depraved to assail the things that had been established medicinally; but, after the author of any insanity and his error had alike been condemned, they judged it sufficient that whoever should at any time become a participant in this error be bound by the principal sentence of its condemnation. § 1. Thus a synod condemned Sabellius, and it was not necessary that his followers afterward be condemned; but according to the tenor of the ancient constitution, the universal church considered that those who became participants either in that depravity or in its communion were to be rejected. Thus, by condemning Arius, Eunomius, Macedonius, and Nestorius, the synod once held does not permit anyone thereafter to come to new councils—

C. III. It is not fitting to proceed further against one who relapses into a condemned heresy.

Likewise Felix. Acacius was not the inventor of a new or his own error, so that new decrees should proceed against him, but mingled his communion with another's crime. And so it was necessary that by the just balance he fall into that sentence which the author of the error had received together with his successors through synodal agreement. GRATIAN. Therefore, if that bishop fell into a heresy already condemned, being condemned by the ancient excommunication he was not able to condemn others. For one excommunicated is not able to excommunicate others. Hence Alexander II writes to Valerian, bishop and martyr:

C. IV. One excommunicated cannot excommunicate another.

We have heard that Henry, called archbishop of Ravenna, has attempted to excommunicate you. But because one excommunicated could not excommunicate you, absolving you and yours by apostolic authority, we command you never to be concerned about it. GRATIAN. But if from his own heart he fashioned a new heresy, from the time he began to preach such things he could condemn no one, because one already prostrate cannot cast anyone down. For the power of binding and loosing was handed over by the Lord to true priests, not false ones. For when he was about to say to the Apostles, "Whose sins you shall remit, etc.," he first said, "Receive the Holy Spirit," so that he might show evidently to all that he who does not possess the Holy Spirit cannot retain or remit sins. Moreover, no one receives the Holy Spirit except within the church, because he also creates that very unity through grace. § 1. Hence it was said only to those gathered into one, "Receive the Holy Spirit," and only upon those gathered into one on the day of Pentecost did the Holy Spirit descend. But just as he is not received outside the church, so outside her he works nothing. Therefore, since, as the Apostle says, the Spirit petitions and the Spirit obtains, outside the church he causes neither petitioning nor obtaining. Hence the Lord, when about to say, "Whatever you shall ask, etc.," first said, "If two of you shall agree upon earth, etc." And again: "Wherever two or three shall have been gathered in my name, there am I also in their midst," plainly showing to all that he does not dwell in the hearts of those who, having followed the singularity of pride, tear themselves away from the joining together of Christ's body. But in those in whom Christ does not dwell, the Holy Spirit, fleeing the rifts of minds, has no place. Therefore, since remitting or retaining sins, excommunicating or reconciling, is the work of the Holy Spirit and the power of Christ, it appears that those who are outside the church can neither bind nor loose, neither by reconciling restore anyone to ecclesiastical communion nor by excommunicating deprive anyone of her fellowship, of which they themselves—polluted by heresy or schism or marked by a sentence—are proved to be entirely deprived. Hence, when the Lord gave all the disciples an equal power of binding and loosing, he promised that he would give Peter, for all and before all, the keys of the kingdom of heaven, saying: "To you I shall give the keys of the kingdom of heaven." Therefore, whoever shall have been alien from the unity of the church—which is understood through Peter—cannot execrate and is not able to consecrate; he does not possess the power of excommunication or reconciliation. Hence the Apostle, when he wrote that the Corinthian fornicator was to be excommunicated, said: "I indeed, absent in body but present in spirit, have already judged as though present him who has acted thus: in the name of our Lord Jesus Christ, when you and my spirit have been gathered together, with the power of our Lord Jesus Christ, to hand such a person over to Satan for the destruction of the flesh." In this, showing the form of excommunication, he taught that no one except a faithful person is to be marked, and only by a faithful person. For only a faithful person is able to work anything in the name of the Lord and with his power cooperating, since no one can say, "The Lord Jesus," except in the Holy Spirit. Likewise, since the Lord prohibits the lamb from being eaten outside the Catholic Church, those who are alien from her by profession of faith are not repelled from her participation, which they abandoned by their own choice, but are permitted to depart, like those who, hearing, "Unless you shall have eaten the flesh of the Son of Man and drunk his blood, etc.," said, "This saying is hard, and who can hear it?" and so went backward, not repelled but permitted to depart. Hence also the Apostle, when treating of those to be excommunicated, first said, "If any brother"; but concerning unbelievers he added, saying, "The Lord will judge those who are outside." But he entrusted to us judgment concerning those who are within.

Now, just as from the fact that the Apostle said "brother," and from the things he added concerning the faithful and unbelievers, it appears that only a faithful person is to be excommunicated, so from the fact that this is written only to the faithful—or rather, because just as he who blesses is greater than the person who is blessed, so he who curses by office is greater than the person who is cursed—it is clearly established that he who withdraws from the integrity of the Catholic faith possesses no power of cursing or blessing. For he is not able to curse a Catholic, as one superior to himself; he cannot give a sentence against one alien from the faith, as against one equal to himself. But these things that have been said concerning heretics, schismatics, or excommunicated persons—namely, that they do not possess the power of binding or loosing—are proved by the authorities of many. For Pope Leo says, [sermon III on the anniversary of his elevation, and sermon II on the birthday of the Apostles]:

C. V. No one is loosed or bound except him whom the authority of blessed Peter shall have loosed or bound.

Therefore, Peter's privilege remains wherever judgment is rendered from his equity, and there is neither excessive severity nor remission where nothing will be loosed or bound except what blessed Peter shall either have bound or loosed.

C. VI. In the person of Peter the church received the power of binding and loosing.

Likewise Augustine on John, [tractate 50, at c. 12]. "Whatever you shall have bound upon earth will be bound also in heaven." If this was said to Peter alone, the church does not do this. But if it is also done in the church—as surely the things bound on earth are bound also in heaven, and the things loosed on earth are loosed also in heaven, because when the church excommunicates, the excommunicated person is bound in heaven; when the church reconciles, the reconciled person is loosed in heaven—if, therefore, this is done in the church, Peter, when he received the keys, signified the holy church. If the good in the church were signified in the person of Peter, the evil in the church were signified in the person of Judas.

C. VII. One firm in his own merits is sometimes disturbed by those of another.

Likewise Ambrose, [at c. 5 of Luke]. The ship that has Peter is not disturbed; that one which has Judas is disturbed. Although the merits of many disciples were sailing there, nevertheless the faithlessness of the betrayer was still agitating it. Peter is in each, but he who is firm in his own merits is disturbed by those of another. Therefore, let us beware of the faithless man; let us beware of the betrayer, lest through one man many of us be tossed upon the waves. Therefore, this ship in which prudence sails is not disturbed; faithlessness is absent, faith prevails. For how could that ship be disturbed over which he presided in whom is the foundation of the church? Disturbance is therefore there where faith is small; security is where love is perfect. Finally, although others are commanded to let down their nets, to Peter alone it is said: "Put out into the deep," that is, into the depth of disputations. For what is so deep as to see the depth of riches, to know the Son of God, and to take up the profession of divine generation? Although the human mind cannot comprehend it fully by the investigation of reason, nevertheless the fullness of faith embraces it.

C. VIII. Peter alone received the command to catch a fish with a hook.

The same, [in the same place, a little below]. There is another apostolic kind of fishing, by which kind the Lord commands Peter alone to fish, saying: "Cast in a hook, and take the fish that first comes up."

C. IX. Let no disturbance draw anyone away from the path of the Apostolic See, which has always destroyed all heresies.

Likewise Pope Lucius to all bishops. Therefore, do not withdraw from the right faith and the apostolic path on account of any disturbance, knowing that, according to the sentence of the Savior, blessed are those who suffer persecution on account of justice. This is the living tradition of the Apostles; this is true charity, which is to be preached and especially loved and cherished, and held confidently by all; this holy and apostolic mother of all churches, the church of Christ, which by the grace of almighty God is proved never to have erred from the path of apostolic tradition, nor has succumbed to being depraved by heretical novelties, but, as in the beginning she received the rule of the Christian faith from her founders, the chief Apostles of Christ, remains unblemished in faith.

C. X. The faith of the Roman church destroys all heresies and cherishes none.

Likewise Sixtus, [Pope Sixtus II to Bishop Gratus, epistle 1]. I remember that I preside under the name of that church whose confession was glorified by the Lord Jesus Christ, and whose faith never cherishes any heresy but indeed destroys them all. But I understand that it is not lawful for me to act otherwise than to expend all my efforts upon that cause in which the salvation of the universal church is assailed.

C. XI. The Roman church has succumbed to no heresies.

Likewise Pope Eusebius, [to the bishops of Tuscany, epistle 3]. In the Apostolic See the Catholic religion has always been preserved without stain.

C. XII. Whenever a matter of faith is debated, let it be referred to the Roman church.

Likewise Innocent, [Pope Innocent to the bishops of the Council of Milevis, epistle 26]. Whenever a matter of faith is debated, I judge that all our brothers and fellow bishops ought to refer only to Peter —that is, to the authority of his name and honor—that which can benefit all the churches throughout the whole world, just as your Charity has now referred it.

C. XIII. The Roman church has possessed zeal for the Christian religion before the others.

Likewise Pope Julius, [to the eastern bishops, epistle 1]. In consideration of our office, it is not for us to dissemble; there is no freedom to be silent for us, upon whom a greater zeal for the Christian religion lies than upon all others.

C. XIV. The faith that the Roman church commends does not fear the mouths of others.

Likewise Jerome, [to Damasus in the exposition of the creed]. This is the faith, most blessed Pope, that we learned in the Catholic Church and that we have always held. If perhaps something has been set forth in it less skillfully or too incautiously, we desire to be corrected by you, who hold both the see and the faith of Peter. But if this confession of ours is approved by the judgment of your apostolate, whoever wishes to blame me will prove himself unskilled, or malevolent, or even not Catholic but a heretic. Likewise: § 1. The holy Roman church, which has always remained immaculate, by the Lord's providence and with the blessed Apostle Peter bringing aid, will remain in the future without any assault by heretics, and will persist firm and immovable at every time.

C. XV. It is permitted neither to think nor to will anything other than the Roman church.

Likewise Marcellus to all the bishops established throughout Antioch, [epistle 1]. We ask you, most beloved brothers, that you teach and think nothing other than what you have received from blessed Peter the Apostle and the other Apostles and Fathers. For he is the head of the whole church, to whom the Lord says: "You are Peter, and upon this rock I will build my church." For his see was first among you, which afterward, at the Lord's command, was transferred to Rome, over which, with divine grace giving support, we preside on this present day. But if your see of Antioch, which was formerly the first, yielded to the Roman See, there is no see that is not subject to its dominion. Nor ought you to deviate from its ordering, to which, by the ordering of divine grace, all greater ecclesiastical affairs have been commanded to be referred, so that they may be ordered regularly by that see from which they took their beginnings.

C. XVI. It is not lawful for the church of Alexandria to dissent from the Roman church.

Likewise Bishop Leo to Dioscorus, Bishop of Alexandria, [epistle 79, otherwise 81]. Since the most blessed Apostle Peter received the primacy from the Lord, and the Roman church remains in his institutions, it is impious to believe that the holy bishop Mark, his disciple, who first governed the church of Alexandria, confirmed the decrees of his traditions by other rules, since without doubt disciple and master were of one spirit from the same fountain of grace, and the ordained could hand down nothing other than what he received from the ordainer.

C. XVII. By the profession of her faith the Roman church cuts off the ear of error.

Likewise Gregory. If Peter deliberately struck the ear, he taught that they ought not to have in appearance the ear that they did not have in ministry. But the good Lord both restored hearing even to him, according to the prophetic sayings, and showed that even those who have been wounded in the Passion of Christ can be healed if they are converted, because every sin is washed away in the ministry of faith. Peter, therefore, takes away the ear. Why Peter? Because he is the one who received the keys of the kingdom of heaven. For he condemns who also absolves, since the same man obtained the power of binding and loosing. Moreover, he takes away the ear of one who hears badly; with the spiritual sword he takes away the inner ear of one who understands badly. Let us beware lest anyone's little ear be taken away. The Passion of the Lord is read: if we refer the weakness of his

bodily Passion to his divinity, the little ear is cut off, and it is cut off by Peter, who did not permit Christ to be considered a prophet, but taught that he should be designated the Son of God by a faithful confession.

C. XVIII. Outside the unity of the church the Holy Spirit is not received.

Likewise Cyprian, [in the treatise *On the Unity of the Church*]. The Lord speaks to Peter: "I say to you that you are Peter, and upon this rock I will build my church." Upon one man he builds the church, and although after his resurrection he grants equal power to all the Apostles and says, "As the Father has sent me, I also send you. Receive the Holy Spirit," nevertheless, in order to manifest unity, by his authority he arranged that the origin of that same unity should begin from one man. The other Apostles assuredly were what Peter was, endowed with an equal partnership both of honor and of power. But the beginning proceeds from unity, so that the church of Christ may be shown to be one; this one church the Holy Spirit also designates in the *Song of Songs* from the person of Christ the Lord, saying: "One is my dove, my perfect one; one is she to her mother, chosen by her who bore her." Blessed Paul the Apostle also teaches this unity of the church and reveals the sacrament of unity, saying: "One body and one spirit; one hope of your calling. One Lord, one faith, one baptism, one God." We ought firmly to hold and vindicate this unity, especially we bishops who preside in the church of God, so that we may prove the episcopate itself also to be one and undivided. Let no one deceive the brotherhood; let no one corrupt the truth of the faith by faithless prevarication. § 1. The episcopate is one, a share of which is held by each for the whole. And the church is one, which by an increase of fruitfulness is extended more widely into a multitude, just as there are many rays but one light, and there are many branches of a tree but one strength founded upon a tenacious root, and just as from one fountain very many streams flow down; and although their numerousness appears diffused by the abundance of overflowing plenty, unity is nevertheless preserved in the source. Tear a ray of the sun from its body: unity admits no division. Break a branch from the tree: it will not be able to put forth fruit. Cut off a stream from the fountain: once cut off, it dries up. So too the Lord's church, flooded with light, extends its rays throughout the whole world; nevertheless, it is one light that is diffused everywhere, nor is the unity of the body divided. By the abundance of her fruitfulness she extends her branches throughout the whole earth, pours forth her flowing streams, and spreads more widely; nevertheless, there is one head, and one origin, and one mother rich in fruitfulness. The bride of Christ cannot be defiled: she is incorrupt and chaste. She knows one house; with chaste modesty she guards the sanctity of one bedchamber.

C. XIX. He who abandons the unity of the universal church does not have God as Father.

The same, [in the same place, a little below]. He is an alien, he is profane, he is an enemy: he cannot have God as Father who does not hold the unity of the universal church. The same: § 1. When the Lord urged unanimity and peace upon his disciples, he said: "I say to you that if two of you agree upon earth concerning anything whatever that you ask, it will be granted to you by my Father, who is in heaven. For wherever two or three have been gathered in my name, I am with them," showing that very much is granted not to the multitude but to the unanimity of those praying. "If two," he says, "of you agree upon earth": he placed unanimity first; he set the concord of peace before it, and taught that we should agree faithfully and firmly. But how can he agree with anyone who does not agree

with the body of the church itself and with the universal brotherhood? And how can two or three be gathered in the name of Christ who, it is established, are separated from Christ and from his Gospel?

C. XX. He who does not hold the unity of Catholic peace does not have the power of binding and loosing.

Likewise Jerome. All things considered, I think that I do not rashly say that some are in the house of God in such a way that they themselves are also that same house of God, which is said to be built upon the rock, which is called the one dove, the beautiful bride without wrinkle and blemish, the enclosed garden, the sealed fountain, the well of living water, and the paradise with the fruit of apples; this house also received the keys and the power of loosing and binding. If anyone despises this house when it corrects and reproves, "let him be to you," he says, "as a gentile and a publican." Of this house it is said: "Lord, I have loved the beauty of your house and the place where your glory dwells"; and: "Who makes those of one mind dwell in a house"; and: "I rejoiced in the things that were said to me: We shall go into the house of the Lord"; and: "Blessed are those who dwell in your house; they will praise you for ages of ages."

C. XXI. Different crimes are to be visited with different penalties.

Likewise Jerome. Let us not bring deceitful scales on which we weigh what we wish according to our judgment, saying, "This is grave; this is light"; but let us bring the divine scale from the Holy Scriptures, as from the Lord's treasuries, and upon it let us weigh what is graver. At the time when the Lord showed that earlier offenses were to be guarded against by recent examples of penalties, an idol was both fashioned and worshiped, a prophetic book was burned by the wrath of a contemptuous king, and a schism was attempted: idolatry was punished by the sword; the burning of the book, by slaughter in war and captivity in a foreign land; schism, by the opening of the earth, its authors being buried alive and the others being consumed by heavenly fire. Who now would doubt that the deed which was punished more gravely was the more criminal?

C. XXII. The Lord receives sacrifice from the church alone.

Likewise Gregory in the *Morals*, [book 35, c. 6]. Because the truth is beheld from the Catholic Church alone, the Lord declares that with himself is the place from which he may be seen. Moses is placed upon the rock so that he may contemplate the face of God, because unless one holds the solidity of faith, he does not recognize the divine presence. Of this solidity the Lord says: "Upon this rock I will build my church." § 1. For she alone is the one through whom the Lord gladly receives sacrifice; she alone is the one who confidently intercedes for those who err. Hence the Lord also commanded concerning the offering of the lamb, saying: "In one house you shall eat it, and you shall not carry any of its flesh outside the doors." For it is eaten in one house because in the one Catholic Church the true offering is sacrificed to the Redeemer. The divine law forbids any of its flesh to be carried outside because it forbids what is holy to be given to dogs. She alone is the one who guards those placed within her by the strong bond of charity. Hence also the water of the flood indeed raised the ark to higher places, but destroyed all whom it found outside the ark.

C. XXIII. He who tears Christ's body apart does not exhibit faith toward Christ.

Likewise Ambrose, [in the funeral oration *On the Death of His Brother*]. Satyrus summoned a bishop to himself and thought no grace true except the grace of the true faith; and he inquired of him whether he was in agreement with the Catholic bishops—that is, with the Roman church. And perhaps in that region the church of that locality was in schism. For Lucifer had divided himself from our communion, and although he had gone into exile for the faith and had left heirs of his faith, nevertheless Satyrus did not think that faith existed in schism. For although they held faith toward God, nevertheless they did not hold it toward God's church, whose limbs, as it were, they allowed to be divided and whose members to be torn apart. For since Christ suffered for the sake of the church, and the church is the body of Christ, faith does not seem to be exhibited toward Christ by those by whom his Passion is made void and his body is torn apart. And so, although he owed a debt of gratitude and feared to sail as a debtor of so great an obligation, nevertheless he preferred to cross over to the place where he could safely discharge it. For he judged that the payment of gratitude to God lay in disposition and faith; and indeed, as soon as freer access to the church was first available, he did not delay to fulfill it, and he both received the desired grace of God and preserved it once received.

C. XXIV. One must withdraw even bodily from him who does not have the faith of Christ.

Likewise Bede on the Epistle of John, [the second, sole chapter]. "Everyone who departs and does not remain in the doctrine of Christ does not have God. He who remains in the doctrine of Christ has both the Son and the Father. If anyone comes to you and does not bring this doctrine, do not receive him into the house, nor say 'Hail' to him. For he who says 'Hail' to him shares in his evil works." What John here taught in words about avoiding schismatics or heretics, he also displayed in deeds. § 1. For his hearer, the most holy and most valiant martyr Polycarp, bishop of the Smyrnaeans, relates of him that at one time, when he had entered the baths at Ephesus for the sake of washing and had seen Cerinthus there, he immediately leapt out and departed without washing, saying: "Let us flee from here, lest the very baths in which Cerinthus, the enemy of truth, is washing should collapse." This same Polycarp also, when he once encountered Marcion saying to him, "Do you recognize us?" answered: "I recognize the firstborn of Satan."

C. XXV. He who attempts to eat the lamb outside the church of blessed Peter is profane.

Likewise Jerome, [to Damasus]. Since the ancient East, dashed against itself by the fury of its peoples, tears the Lord's seamless tunic, woven from above, piecemeal into fragments, and foxes lay waste Christ's vineyard, amid broken cisterns that have no water it is difficult to understand where the sealed fountain and that enclosed garden may be; therefore I judged that I should consult the chair of Peter and the faith praised by the apostolic mouth, now requesting food for my soul from the place from which formerly I received the garments of Christ. Nor indeed could the vastness of so great a liquid element and the intervening breadth of lands prevent me from seeking the precious pearl. Wherever the body shall be, there too the eagles will be gathered. Though the patrimony has been squandered by wicked offspring, among you alone the uncorrupted authority of the fathers is preserved. There the earth, with its fertile turf, returns the purity of the Lord's seed in hundredfold

fruit; here the grain buried in the furrows degenerates into darnel and oats. Now in the West the sun of justice arises; but in the East that Lucifer who had fallen has placed his throne above the stars. You are the light of the world; you are the salt of the earth; you are vessels of gold and silver; here the earthen vessels await the iron rod and eternal burning. Therefore, although your greatness frightens me, your kindness nevertheless invites me.

From the priest I, a sacrificial victim, ask salvation; from the shepherd I, a sheep, demand protection. Let envy of the Roman summit depart; let ambition recede. I speak with the successor of the fisherman and the disciple of Christ. Following no reward except Christ, I am joined in communion with your Beatitude—that is, with the chair of Peter. I know that the church was founded upon that rock. Whoever shall have eaten the lamb outside this house is profane. If anyone shall not have been in Noah's ark, he will perish when the flood reigns. And because, on account of my crimes, I migrated to that desert which bounds Syria along the adjoining frontier of the barbarians, I cannot, with so many intervening spaces, always seek the holy thing of the Lord from your Holiness; and therefore I follow your colleagues, the Egyptian confessors, and conceal myself, a little boat, beneath ships of burden. I do not know Vitalis; I reject Meletius; I am ignorant of Paulinus. Whoever does not gather with you scatters—that is, he who is not Christ's is Antichrist's.

C. XXVI. Fellowship with heretics is to be shunned by Catholics.

Likewise Ambrose, [in the commentary on Luke, c. 9]. What house is more worthy of the entrance of apostolic preaching than the holy church? Or who appears more worthy to be preferred to all than Christ, who was accustomed to wash the feet of his guests, and does not permit any whom he has received into his house to dwell there with polluted footsteps, but, although stained by their former life, deigns nevertheless to cleanse them for the remainder of their course? He, therefore, is the only one whom no one ought to abandon, no one ought to exchange, to whom it is well said: "Lord, to whom shall we go? You have the words of eternal life, and we believe." Do you see the executor of the heavenly precepts, who, because he did not change his lodging, merited the fellowship of a heavenly dwelling? Therefore, it is commanded that the faith of the church be sought first; if Christ is an inhabitant in her, without doubt she is to be chosen. But if a faithless people or a heretical teacher deforms the dwelling, communion with heretics is judged to be avoided and the synagogue to be fled; the dust of the feet is to be shaken off, lest, when the barren dryness of faithlessness is crumbling away, the footprint of your mind be polluted as though by dry and sandy soil. For just as the preacher of the Gospel ought to take upon himself the bodily infirmities of the faithful people, according to what is written, "Who is weak, and I am not weak?" so, if there is any church that rejects the faith and does not possess the foundations of apostolic preaching, it is to be abandoned lest it be able to sprinkle any stain of faithlessness. This the Apostle also asserted plainly, saying: "Avoid a heretical man after one correction."

C. XXVII. One divided from the unity of the church can neither be loosed from sins nor enter the heavenly kingdom.

Likewise Bede on Matthew, [in the homily for the feast of the Apostles Peter and Paul, on Matthew c. 16]. Whoever shall in any way have separated themselves from the unity of the faith or fellowship of the Apostle Peter can neither be absolved from the bonds of sins nor enter the gate of the heavenly kingdom.

C. XXVIII. The sacrifices of those whose faith and life are condemned are not to be received.

Likewise Jerome on the prophet Amos, [on c. 5]. "I have hated and cast away your festivals, and I will not receive the odor of your assemblies. But if you offer me your holocausts and gifts, I will not accept them, and I will not regard the vows of your fatlings." § 1. Moreover, God hates—and not only hates but casts away—the festivals of those who celebrate not God's festivals but their own. And a little later: § 2. Moreover, to hate, not to smell, and to cast away are spoken by a human similitude, so that in our words we may recognize the disposition of God. And if they offer holocausts, so that they appear to fast, to give alms, and to promise chastity—which are true holocausts—the Lord does not receive them. For he judges not the greatness of the sacrifices, but the merits and causes of those offering them. § 3. Hence also the widow who had put two mites into the treasury is preferred by the Savior to all, because the Lord regards not the things that are offered but the will of those offering them.

C. XXIX. Where charity is not, there faith or justice has no place.

Likewise Augustine, [*On the Lord's Sermon on the Mount*, Book I, c. 9]. Where sound faith is not, justice cannot be, because the just man lives by faith. Nor should schismatics promise themselves anything from this reward, because likewise, where charity is not, justice cannot be. For love of neighbor works no evil; if heretics possessed this love, they would not tear apart the body of Christ, which is the church.

C. XXX. One who withdraws from the faith loses the perfection of the Spirit.

Likewise Innocent, [Pope Innocent to Alexander, epistle 18]. When heretics departed from the Catholic faith, they lost the perfection of the Spirit that they had received.

C. XXXI. Heretics are wholly without the power of sacred office.

Likewise Cyprian, greeting his son Magnus, [Book I, epistle 6]. We say that absolutely all heretics and schismatics have no power or right. For this reason Novatian neither ought nor can be excepted from being himself also counted among the adversaries and antichrists, since he stands outside the church and acts against the peace and love of Christ. And a little later: § 1. The church is one, which is one and cannot be both within and without. For if she is with Novatian, she was not with Cornelius. But if she was with Cornelius, who succeeded Bishop Fabian by lawful ordination and whom, after the honor of the priesthood, the Lord also glorified by martyrdom, Novatian is not in the church, nor can he be counted a bishop, since, after despising the evangelical and apostolic tradition, he succeeded no one and arose from himself. For he who was not ordained in the church can in no way possess or hold the church. And a little later: § 2. But as to their being said to know the same God the Father as we, the same Son Christ, and the same Holy Spirit, not even this can assist such persons. And below: § 3. We find that in such a crime not only the leaders and authors but also the participants are destined for punishment unless they separate themselves from the communion of the evil, the Lord commanding through Moses and saying: "Separate yourselves from the tents of these most hard men, and do not touch anything that belongs to them, lest you perish together in their sins." And the Lord fulfilled what he had threatened through Moses, so that whoever had not separated himself from Korah, Dathan, and Abiram immediately paid the penalties for impious

communion. By this example it is shown and proved that all will be liable to punishment and guilt who with irreligious rashness mingle themselves with schismatics against their prelates and priests, just as the Holy Spirit also testifies through the prophet Hosea and says: "Their sacrifices are like the bread of mourning; all who eat them will be contaminated," plainly teaching and showing that absolutely all who have been contaminated by their sin are joined in punishment with their authors. What merits, therefore, can there be with God among those upon whom punishments are divinely inflicted? And below: § 4. But if all heretics and schismatics who are outside do not possess the Holy Spirit, and therefore the hand is imposed upon them among us so that here that may be received which is not there and cannot be given there, it is manifest that the remission of sins cannot be given through those who, it is established, do not possess the Holy Spirit.

C. XXXII. Let those who strive against the peace of the church be stripped of their honor.

Likewise Pope Liberius, [in the epistle to Athanasius]. Those who are against the peace of the church, if they possess a dignity or the belt of military service, are to be stripped of them. But if they are private persons, then, if they are noble, let them suffer proscription of their property; but if they are of low birth, let them not only be beaten in the body but also be punished with perpetual exile.

C. XXXIII. A bishop established in schism does not consecrate.

Likewise Pope Pelagius. Shameful, so to speak, is the plunder in division: a bishop not consecrated but execrated. For if we examine the very name of consecration with rational and vigorous understanding, he who refuses to be consecrated together with the universal church can by no reason be called or be consecrated. For to consecrate is to make sacred together. But, divided from the inward parts of the church and separated from the Apostolic Sees, he himself rather execrates; he does not consecrate. Rightly, therefore, will he be able to be called only execrated, not consecrated, whom the church does not recognize as making sacred together in unity with her joined members. Nevertheless, let us see whether he preserved even the custom of those very regions in his disordering. Assuredly, this was the ancient custom: because it had been burdensome for them to be ordained by the Apostolic See on account of the distance or difficulty of the journey, the bishops of Milan and Aquileia ought to ordain one another, yet in such a way that the pontiff of the other city ought to come to the city in which the bishop was to be ordained, so that the election of the person to be ordained could be recognized better and more easily by the ordainer present, from the consent of the universal church over which he was to be placed, and so that the man who was to be advanced to the episcopate, but was nevertheless not to be subjected to his ordainer, might be ordained in his own church. For since, as we have said, the church is one, to whom it is said in the *Song of Songs*, "One is my dove," it is established that there is no other except the one founded upon the apostolic root, by whom it cannot be doubted that the faith itself was propagated throughout the whole world. Although this is altogether very well known to you, let us nevertheless prove it by the testimony of blessed Augustine. Hear what the most illustrious doctor of the church says in a certain work of his. For he says: "But if the church in which there is schism can in no way rightly be called the church, it remains that, since the church cannot be nonexistent, she is the one who, established upon the root of the Apostolic See through the successions of bishops, can in no way be extinguished by the malice of any men—even if that malice is known and cannot be excluded, but is judged, according to the circumstances of the times, to be tolerated."

C. XXXIV. He who consents to schismatics does not share in unity.

The same. Schism itself, which is a Greek name, signifies a tearing. But a tearing cannot be in unity. Therefore, he who communicates with schismatics does not communicate with unity. They made parties for themselves and, separating themselves from that which is one—to speak now in the words of the Apostle Jude—they do not have the Spirit. From all these things it is brought about that, because they are not one in unity, because they wished to be in a party, and because they do not possess the Spirit, they cannot possess the sacrifice of the body of Christ. § 1. But the question for us now is not whether we should tolerate the evil, but whether we ought to be joined with schismatics. If they themselves too, although abounding in their own opinion, nevertheless sought the truth while placed within the maternal inward parts, they were not to be repelled by us until, with reason as guide, the truth of the matter had become clear among them. But because they divided themselves from the universal church, as blessed Augustine says, every Catholic securely detests that party which he knows does not communicate with the universal church strengthened by the Apostolic Sees. § 2. Nor indeed does it lighten their crime—but rather increases it—that you said they resisted for a long time lest they receive into their communion those communicating with the Apostolic Sees. For in this, while those too are to be blamed who wished to communicate with such persons, nevertheless much more are those to be execrated who scorned communion with the Apostolic Sees not only in priests but even in laypersons themselves. Nor does it profit them that in the same letter you declare that they suspended themselves from our communion either through ignorance of reason or through the simplicity of their understanding. For this very thing is rather why they are schismatics: not a judgment of thinking differently, but a certain most evil opinion divided them, because they feared things reported among themselves yet unknown to them and rashly believed them against the Apostolic See. § 3. Blessed Augustine announces this to be schism in a special sense, saying concerning such persons: "By rashly believing against the authority of those churches that merited to receive letters from the Apostolic See, he will not be able to repel from himself the most monstrous crime of schism." In sum, either you believe them to be the church—and, since there cannot be two churches, you will judge us, which may it not be, to be schismatics—or, if it is established that the true church is in the Apostolic Sees, recognize them also as divided from unity, and that the question of communion has been removed, since it is established that true communion cannot exist except in unity. § 4. Therefore, do not wish to be joined indiscriminately to the sacrifices of both, as though there were no difference between schismatics and the church. What a schismatic confects is not the body of Christ, if we are directed with truth as guide. For no one will be able to invent that Christ can be divided without the Apostle's reproof. It is established that the church—which, as has often been said, is Christ's body—is one, and she cannot be divided into two or more. For as soon as anyone shall have departed from her, he ceases to be the church.

C. XXXV. From the time a bishop teaches things contrary to the faith, he cannot despoil another.

Likewise Pope Nicholas writes to Emperor Michael, [epistle 7]. Pope Celestine, writing to the eastern bishops, says: "If anyone was either excommunicated or stripped of the dignity of bishop or cleric by Bishop Nestorius or by others who follow him, from the time they began to preach such things, it is manifest that he both has remained and remains in our communion; nor do we judge him to have

been removed, because the sentence of one who had already rendered himself fit to be removed could remove no one."

C. XXXVI. Those who are excommunicated by heretics are not to be regarded as excommunicated.

Likewise to the clergy of Constantinople. The authority of our see, he says, has openly decreed that no bishop, cleric, or Christian of any profession who was cast down from communion or from his place by Nestorius or those like him, from the time they began to preach such things, is to be seen as either cast out or excommunicated; but all these persons remain in our communion to this day, because he who staggered while preaching such things could cast down or remove no one. You have understood, emperor, from the things recalled above that those who had formerly been removed and already cast down could not remove anyone, so that we need not say even their own prelate, or cast down anyone already prostrate.

C. XXXVII. Excommunicated persons are not to be received to render judgment.

Likewise Pope Nicholas, [in the same place, a little below]. We marvel how excommunicated persons were received to render judgment, since according to the apostolic canons they are prohibited from being received into communion alone without commendatory letters. For it is absurd that one who, according to the sacred rules, is not permitted even to communicate with the least should be permitted even to judge those who are almost his superiors. GRATIAN. By these authorities it is manifestly shown that, from the time anyone begins to teach anything contrary to the faith, he is able neither to cast anyone down nor to condemn him. § 1. Nevertheless, that saying of Augustine is objected: "Those departing from the faith lose neither baptism nor the power of baptizing." Therefore, since both powers—namely, of baptizing and of excommunicating—follow priestly anointing, those departing from the faith will either retain both or lack both. But the power of office is one thing, its execution another. Often the power of office is either received, as by monks in priestly anointing, or, once received, is retained without its execution, as by suspended persons, to whom administration is forbidden but the power is not taken away. Therefore, the power is not removed from those departing from the faith, just as it is not restored to those returning, lest injury appear to be done not to the man but to the sacrament. Hence those baptized or ordained by heretics, when they return to the unity of the Catholic faith, if perhaps for the sake of ecclesiastical peace they are received in their orders, will not have repeated the sacrament that is proved to have been administered in the church's form; but through the imposition of the hand the efficacy of the sacrament will be supplied, which is taught to have been conferred upon no one outside the church. Therefore, since both powers remain in heretics, if a heretic excommunicates a Catholic or another heretic in order to draw him into the communion of his heresy, because the sentence is unjust it lacks weight. § 2. But if he gives sentence against a Catholic living wickedly or against a heretic devoted to flagitious deeds or crimes, so that otherwise each might return to the rule of right living, it appears deservedly to be asked whether both are bound by his sentence, or only the heretic. It can be said, however, that the Catholic is in no way bound by the heretic's sentence. For he cannot strike with the sword of the mouth one whom he is unable to accuse or against whom he is unable to testify. For if those whom divine testimonies do not support, because they are outside the church, have lost the weight of human testimony against those who appear to be in the church, neither will

those who are proved to have departed from her faith, and therefore have been condemned by the church, be able to possess the weight of ecclesiastical authority against those same persons. But a heretic appears to have power over a heretic, just as the devil also has power over the evil, as over his own livestock. Hence Augustine writes to Vincentius the Donatist and Rogatist, [epistle 48]:

C. XXXVIII. One excommunicated by heretics for a crime is not to be received by Catholics.

Whoever receives one cast out by you for some flagitious deed or crime in the same way as those are received who, apart from the error by which you are separated from us, lived among you without crime, displeases us. But you do not easily show these things either; and if you show them, we tolerate certain persons whom we cannot correct or punish; nor on account of the chaff do we abandon the Lord's threshing floor, nor on account of the bad fish do we break the Lord's nets, nor on account of the kids to be separated at the end do we desert the Lord's flock, nor on account of the vessels made unto dishonor do we migrate from the Lord's house.

C. XXXIX. Whoever is excommunicated by heretics for discipline is not to be received by Catholics.

The same to Eusebius, [epistle 169]. A former subdeacon of the church of Hispania, named Primus, when he was prohibited from undisciplined access to consecrated women and despised orderly and sound precepts, was removed from the clergy. § 1. I, if it pleases the Lord, observe this rule: whoever, after being degraded among them for discipline, wishes to pass over to the Catholic Church is to be received in the humiliation of penance, to which perhaps they too would compel him if he had wished to remain among them. GRATIAN. But this statement of Augustine is understood to have been made not on account of the sentence, whose power outside the church is none, but in detestation of crimes, which are equally to be punished in heretics as in Catholics. Nevertheless, that statement of Augustine can be understood of the power of baptizing, not of binding or loosing or of administering the other sacraments. For baptism, whether it shall have been administered by a heretic or even by a layman, provided that it is received in the unity of the Catholic faith, will not lack effect. But the other sacraments—such as those of the sacred body and blood of the Lord, excommunication, or reconciliation—if they are administered by a heretic or by a Catholic who is not a priest, will have either no effect or a deadly one. Hence they are by no means to be received by faithful men. On this Augustine writes in Book I *On the One Baptism*, [against the Donatists, c. 2]:

C. XL. One placed at the point of death can receive penance even from a heretic.

If extreme necessity should perhaps compel someone, and he should not find a Catholic through whom he might receive it, and, preserving Catholic peace in his mind, should receive through someone placed outside Catholic unity what he would have received within Catholic unity itself, if he should immediately depart from this life, we reckon him only a Catholic. But if he shall have been delivered from bodily death, when he restores himself by bodily presence to the Catholic congregation, from which he had never departed in heart, we not only do not condemn what he did but even praise it most securely and truly, since he believed God to be present to his heart, where he preserved unity, and did not wish to depart from this life without the sacrament of holy baptism—which, wherever he found it, he recognized to belong not to men but to God. But if anyone, although

he can receive it within Catholic unity itself, through some perversity of mind chooses to be baptized in schism, even if he afterward comes to the Catholic Church, it is certain that there the sacrament profits which can be received elsewhere but cannot profit elsewhere; he is perverse and iniquitous, and the more perniciously so, the more knowingly he acts.

C. XLI. Let one who unknowingly received prohibited communion from the hand of a heretic do penance for a year.

Likewise Pope Julian. If anyone shall have given or received communion from the hand of a heretic and does not know that the Catholic Church forbids it, upon understanding it afterward let him do penance for one complete year. But if he knows and neglects it, and afterward performs penance, let him do penance for ten years. Others judge seven, and certain persons more humanely, that he should do penance for five years. § 1. If anyone shall have permitted a heretic to celebrate his mass in a Catholic church and does not know, let him do penance for forty days; if from reverence for him, let him do penance for one year; if for condemnation of the Catholic Church and of the custom of the Romans, let him be cast out of the church as a heretic unless he has repentance; if he has it, let him do penance for ten years. If he shall have withdrawn from the Catholic Church into a congregation of heretics and persuaded others, afterward, if he performs penance, let him do penance for twelve years: three outside the church, seven among the hearers, and two still outside communion. Concerning these it is said thus in the canon: that in the twelfth year they should receive communion without an oblation.

C. XLII. It is better to seize death than to receive communion from the hand of a heretic.

Likewise Gregory, [Pope Gregory, *Dialogues*, Book III, c. 31]. The young King Hermenegild began, despising an earthly kingdom and seeking the heavenly one with strong desire, to lie bound in haircloth and to pour forth prayers to almighty God for his strengthening, and to despise the glory of the passing world all the more loftily, inasmuch as, when bound, he had recognized that what could be taken away was nothing. But when the day of the Paschal feast arrived, in the silence of the dead of night his faithless father sent an Arian bishop to him so that he might receive from his hand the communion of a sacrilegious consecration and through this merit to return to his father's favor. But the man devoted to God reproached the arriving Arian bishop as he ought and repelled his faithlessness from himself with fitting rebukes; for although he lay bound outwardly, nevertheless within himself he stood secure upon a great summit of mind. And so, when the Arian bishop returned to him, his father raged and immediately sent his attendants to kill the most steadfast confessor of God there where he lay.

Question II

GRATIAN. PART I. That no one can be excommunicated or absolved after death is shown from the words of the Gospel in which it is said: "Whatever you shall have bound upon earth, etc." "Upon earth," he says, not beneath the earth, showing that we can loose or bind the living according to the diversity of their merits, but cannot render sentence concerning the dead. Hence Pope Leo writes to Rusticus, Bishop of Narbonne, [epistle 90, c. 7; otherwise epistle 92, c. 6]:

C. I. Those who were unwilling to be absolved by the church in this life cannot be loosed by her after death.

Concerning those deprived of communion and thus deceased. Their case is to be reserved for the judgment of God, in whose hand it was that the death of such persons should not be delayed until the remedy of communion. But we cannot communicate when dead with those with whom we did not communicate while they were living.

C. II. The church can bind or loose the living, not the dead.

Likewise Gelasius, to Faustus the *magister* performing the office of legate at Constantinople. Let it be read, from the time the Christian religion began, or certainly let an example be given in the church of God, that pardon was granted by any pontiffs, or by the Apostles themselves, or finally by the Savior himself, except to those correcting themselves. But it is altogether neither read nor said that what their voice brings forth has been heard beneath this heaven: "Grant us pardon, yet so that we persist in error." Likewise, let those who strive to oppose the canons to us show by which canons, which rules, which reading, or which document—whether from our forebears, or from the Apostles themselves, who without doubt were deservedly more powerful, or from the Lord the Savior himself, who is believed to be about to judge the living and the dead—this either was ever done or is commanded to be done. We read that Christ raised the dead; we do not read that he absolved those dead in error. And he who alone possessed so great a power of doing this principally commanded blessed Peter the Apostle: "Whatever you shall have bound upon earth, etc." "Upon earth," he says. For he nowhere said that one deceased in a bond was to be absolved.

C. III. One ought not to abstain after their death from the alms of those with whom we did not cease to communicate in life.

Likewise Urban II to Bishop Vilimundus. Assuredly, we praise what your Fraternity made known that it did concerning Richard, son of Borrell, from zeal for God and love of souls. But it is not to be feared to such an extent; you are not to abstain from his alms to such an extent. For among the other fathers of our faith, blessed Leo, an outstanding doctor, says: "Those with whom we do not communicate while living, we ought not to communicate with when dead." It is established, therefore, that with those with whom we communicate while they live—to speak from the opposite—we can also communicate when they are dead. We, plainly placed between two opposing groups, can in no way communicate with the impious and schismatics; but with these persons, although they are sinners and plunderers, we communicate dispensationally for a time, because they have supported the church until now and promise that they will be more faithful in the future. Otherwise, it would be necessary for us to depart from these regions of the world. Under this pledge we also recently granted them absolution on the feast of blessed Peter. Therefore, because the aforesaid man departed neither excommunicated by name nor communicating with persons excommunicated by name, but in the faith and service of his Lord, it is lawful for us dispensationally—that is, for as long as we tolerate them—to share in their alms and to assist the soul of the deceased by every means of the Christian religion.

[C. IV.] Likewise Gelasius to all the bishops established throughout Dardania or Illyricum.

And let no one at all persuade you that the crime of his prevarication was relaxed for Acacius, because he who, after falling back into the fellowship of depravity, deserved by right to be excluded from apostolic communion, and died while persisting in this same condemnation, now dead cannot obtain the absolution that while alive he neither sought at all nor merited. For it was delegated to the Apostles themselves by the voice of Christ: "The things that you shall have bound upon earth, and the rest." But concerning him who has been placed under divine judgment, it is not lawful for us to decree anything other than that in which his final day found him. And therefore, unless his name and the other associates of this error have been rejected, you ought to share with none of them at all the purity of the Lord's table, which our forebears always preserved carefully as separate from heretical pollution.

C. V. The sentence of condemnation against an incorrigible person cannot be relaxed.

Likewise Pope Leo, [epistle 13 to the Empress Pulcheria]. Whoever merits to receive a sentence of condemnation, if he wishes to remain in his own opinion, no one will be able to relax it. PART II. GRATIAN. By these authorities it is proved that we can loose or bind the living, not the dead. But this is not to be understood of every crime. For there are certain crimes concerning which any persons can be accused or condemned even after death, such as heresy. Hence in the first session of the Fifth Synod it is read:

C. VI. Heretics are to be excommunicated even after death.

Assuredly, it is put forward by certain persons who say that heretics ought to be anathematized after death and that in this the teaching of the holy Fathers is to be followed, who not only condemned living heretics but also the dead, just as they recalled after death those who had been unjustly condemned and wrote them in the sacred diptychs. This was done in the case of John and Flavian, bishops of Constantinople of religious memory. Likewise in the fifth session: § 1. Augustine says: "If perhaps these books designate their betrayer just as the Lord designated Judas, let them read in them by name and expressly that either Caecilian or his ordainers were betrayers of those same books; and unless I anathematize them, let me myself be judged to have betrayed them." § 2. Augustine of holy memory advised and established that the things that have just been recited were held in the church from the beginning. For an impious dogma has already been accused and condemned, and the tradition of the church wills those who are liable to such a dogma to be anathematized, even though they were also dead. Therefore Augustine of holy memory says: "If Caecilian were now convicted of the things alleged against him, even after his death I anathematize him." Likewise: § 3. Many bishops, having assembled and arranged certain matters from different cases pertaining to ecclesiastical status, established concerning deceased bishops who leave their property to heretics that they should be subjected to anathema even after death. There are also epistles of Augustine of holy memory saying that if any persons during their life were not of right understanding, although they had not yet been condemned while alive, nevertheless, when the sin has been demonstrated, they too should be subjected to anathema after death. Likewise: § 4. "If the things objected against Caecilian are true and could at some time be shown to us, we would anathematize him though dead." Likewise: § 5. "You say that it is lawful for me to judge even concerning the dead, because judgment

is customarily made not only concerning the living but also concerning the dead." Likewise: § 6. Rabbula of holy memory, having been made bishop of the city of Edessa, who shone among the priests, anathematized Theodore of Mopsuestia after death in the church. Likewise: § 7. The church of the Romans also, a few years ago, anathematized Dioscorus, who was pope of that same church, even after death, although he had not sinned in the faith. And all who live here in Rome know this, especially those who are established in dignities, who also remained communicants with the same Dioscorus until his death. Likewise: § 8. If anyone goes back to the times of Theophilus of holy memory or further, he will also find Origen anathematized after death. This both your Holiness and Vigilius, most religious Pope of Old Rome, also did in this case. Likewise: § 9. The holy synod said: The things that have been said and put forward suffice to demonstrate the ecclesiastical tradition that heretics ought to be anathematized even after death. Likewise in the fourth session: § 10. The holy synod said: Various epistles of Augustine of holy memory, who shone among the African bishops, have been recited, signifying that heretics ought to be anathematized even after death. The other most reverend African bishops also preserved such an ecclesiastical tradition; but the holy Roman church too anathematized certain bishops even after death, although during their life they had not been accused concerning the faith, and the records held among us attest both things.

Question III

GRATIAN. PART I. That an entire household is to be excommunicated for the sin of one person is proved by many examples. For on account of the sin of the Sodomites, their little children, who by the privilege of their age did not know their fathers' flagitious deeds, were consumed by heavenly fire. § 1. Likewise, on account of the sin of the Amalekites, not only their little children but even the brute animals down to the one urinating against a wall were commanded by the Lord to be destroyed. § 2. Likewise, Dathan and Abiram were authors of schism against Moses and Aaron, and not only they themselves alone but all their substance descended with them into hell. § 3. In the New Testament too it is sometimes read that, when sins demanded it, a grave pestilence raged, which involved even those who had no consciousness of the sin. Therefore, if little children are found to have been punished so severely for the sins of their parents, there is no doubt that for the sins of the same they can equally be struck by a sentence of excommunication. § 4. To these things answer is made thus: that little children are scourged bodily for the sins of their parents appears from the words of the Gospel, where the disciples are said to have asked concerning the man born blind: "Rabbi, who sinned, this man or his parents, that he should be born blind?" In them is also fulfilled what the Lord said to Moses: "I am a jealous God, visiting the sins of the fathers upon the sons to the third and fourth generation." Spiritually, however, little children are not held by the sins of their parents after they have been cleansed from original sin through the sacrament of regeneration. Hence through Ezekiel the Lord says: "The soul that shall have sinned, that soul shall die; the son will not bear the iniquity of the father, and the father does not bear the iniquity of the son; the justice of the just will be upon him, and the impiety of the impious will be upon him." Whatever sins the parents committed after the son was personally separated from them are not imputed to him for punishment. Hence all posterity are said to be held by the sin of Adam because no one had yet been physically propagated from him. But because before God not the sentence of the priests but the life of the accused is sought, it is evident that one whom the stain of sin does not infect is not to be marked by a sentence. Hence also Paul, writing to the Corinthians, says: "If anyone is named a brother and is a

fornicator, or avaricious, or serving idols, with such a person you ought not even to take food." From these words it is given to be understood that unless someone has first been named concerning a crime—that is, either accused and convicted before a judge or has himself confessed concerning himself in law—he is neither to be struck by a sentence nor is one to abstain from communion with him. Therefore, an entire household is not to be excommunicated for the sin of one person. Hence Augustine writes to Bishop Auxilius, [epistle 75]:

C. I. A son is not to be anathematized for the sin of his father.

If you have concerning this matter a judgment explored by certain reasons or testimonies of Scripture, deign to teach us how a son is rightly anathematized for the sin of his father, or a wife for that of her husband, or a servant for that of his master, or anyone in the household who has not even yet been born, if he is born at the time when the entire household is bound by anathema, and aid cannot be given to him through the washing of regeneration when he is in danger of death. For that was a bodily punishment by which we read that certain contemners of God were killed together with all their people who were participants in the same impiety. For then mortal bodies, which were some day to die in any case, were destroyed for the terror of the living. But the spiritual punishment by which what is written comes about—"The things you shall have bound upon earth will be bound also in heaven"—binds souls, concerning which it was said: "As the soul of the father, so the soul of the son is mine. The soul that shall have sinned, that soul shall die." § 1. Perhaps you have heard that some priests of great name anathematized one of those who sinned together with his household. But perhaps, if they were questioned, they would be found capable of rendering a reason for it. But I, if anyone should ask me whether this is rightly done, do not find what I should answer him; I have never dared to do this concerning the flagitious deeds of certain persons perpetrated unanimously against the church unless I were most gravely moved. But if the Lord has revealed to you how justly it may be done, I by no means despise your youthful age and the beginnings of your ecclesiastical honor. For I, an old man, am prepared to be taught by a young man, and I, a bishop of so many years, by a colleague not yet a year old, how I can render a just reason either to God or to men if we punish with spiritual torment innocent souls for another's crime—a crime that they do not inherit from Adam, in whom all have sinned. For although Classitianus's son inherited from his father the guilt of the first man, to be expiated by the sacred font of baptism, nevertheless who doubts that whatever sin his father committed after he begot him does not pertain to him, since he himself was not a participant in it? What shall I say concerning the spouse? What concerning so many souls of the entire household? Hence, if one soul through that severity by which this entire household was anathematized should perish by departing from the body without baptism, the death of innumerable bodies, if innocent people were violently dragged away from the church and killed, cannot be compared to this loss. Therefore, if you can render a reason concerning this matter, would that by writing back you also furnish it to us, so that we too may be able to do so. But if you cannot, what is it to you to do through an unconsidered agitation of mind that for which, if you are questioned, you are unable to find a right answer? But I have said these things even if our son Classitianus committed something that most justly seemed to you deserving of punishment by anathema. PART II. GRATIAN. Therefore, as is shown most evidently by this authority, one is unlawfully excommunicated for the sin of another, and those who for the sin of one person render a sentence of excommunication against an entire household rest upon no reason. But an unlawful

excommunication does not injure the person marked; it injures the one excommunicating. Hence Gregory writes to Magnus, Bishop of Milan, [Book II, epistle 26]:

C. II. One who unlawfully excommunicates another condemns himself, not the other.

We have learned that Lawrence, formerly our brother and fellow bishop, deprived you of communion although no faults of yours were established. And therefore, fortified by the authority of this precept of ours, perform your office securely and receive communion without any fear.

C. III. Those who curse not in heart but with the mouth contract uncleanness of the lips.

Likewise Jerome on Leviticus. Those who neglect to cut away the habit of an accursed mouth, even if they do not curse in heart, nevertheless incur uncleanness of the lips, according to the word of Isaiah, and defilements of the mouth.

C. IV. Life, not a sentence, binds or looses anyone.

Likewise. If anyone is driven away and cast outside by the incorrect judgment of those who preside over the church, if he himself did not depart beforehand—that is, if he did not so act that he deserved to depart—he is injured in nothing by the fact that he appears to have been expelled by men through an incorrect judgment. And so it comes about that sometimes he who is cast outside is within, and he who appears to be retained within is outside.

C. V. On the same matter.

Likewise Rabanus, *On Ecclesiastical Oppressions*, Book I. We are not condemned forever when we are judged unjustly, as the Psalmist says: "Nor will he condemn him when judgment is rendered against him." Many priests profess that they persecute a fault from zeal for God; but while they do this without discernment, they incur the crime of sacrilege, and while they rush headlong as though to amend, they themselves also fall much worse.

C. VI. By what penalty one who unlawfully excommunicates another is to be struck.

Likewise from the Council of Paris in the time of Louis. Concerning unlawful excommunication, the law of the Catholic emperor Justinian, which the Catholic Church approves and observes, decreed in constitution 128, chapter 351, that no presbyter should excommunicate anyone before the cause for which the ecclesiastical canons command this to be done is proved. But if anyone contrary to these things excommunicates someone, the one who was excommunicated is indeed to return to the grace of holy communion by the authority of the higher priest; but the one who did not excommunicate lawfully is to abstain from holy communion for as long a time as shall have seemed good to the higher priest, so that he may himself justly suffer what he did unjustly. Hence also Saint Gregory wrote, among other things, to Bishop John, who was excommunicating unjustly, saying: "After first quashing and reducing to nothing the decrees of your aforesaid sentence, by the authority of blessed Peter, prince of the Apostles, we decree that, deprived of holy communion for a period of thirty days, you implore from almighty God pardon for so great an excess with the greatest penance and tears. But if we learn that you have fulfilled this sentence of ours too remissly, know that with the Lord's

aid not merely the injustice but the contumacy of your Fraternity is to be punished more severely," because no one is to be judged hastily or out of order—that is, without having been admonished or convicted. § 1. But concerning a summons of this kind, the emperor's law concerning manifest crimes says: "Whoever shall have been summoned by three authoritative summonses of the judge, or called before the judge by three edicts, or by one peremptory edict in place of all—that is, one that extinguishes the case—and shall have refused to present himself before that judge by whom notice was given to him, can be judged against as contumacious. Indeed, cases cannot be retried even through an appeal whenever judgment shall have been rendered against a contumacious person." And this ruling concerning persons summoned by three authoritative summonses was confirmed from evangelical truth by Celestine speaking to Nestorius, the Synod of Ephesus decreeing concerning the same, and blessed Gregory writing to John. § 2. Concerning a peremptory writ the African Council demonstrates in the case of Cresconius that, if after being summoned he refuses to return to wisdom, through the effect of his own contempt and contumacy he is henceforth to be excluded at once by judicial authority. Likewise blessed Gregory, concerning a sentence against a contumacious person, writing to Maximus, the presumptuous bishop of Salona, said: "We exhort you to hasten to come to us, every excuse having been set aside, so that, with justice preserved, through Christ's revelation we may be able both to investigate and to conclude according to the canonical institutes these things of which you are accused. But act in such a way that you impose no further delays upon your coming, lest your very absence rather assign you as liable to the things that are said and compel us to render against you from the council a harsher judgment—that is, as against a contumacious person—not only on account of the aforesaid crimes from which you evade clearing yourself, but also on account of the fault of disobedience."

C. VII. Life, not a sentence, casts someone out of the church or brings him back to her.

Likewise Origen on Leviticus, [homily 14, on c. 24]. When anyone departs from truth, from the fear of God, from faith, and from charity, he departs from the camp of the church even if he is by no means cast out by the voice of the bishop; just as, conversely, someone is cast outside by an incorrect judgment, but if he did not depart beforehand—that is, did not act so that he deserved to depart—he is injured in nothing. For sometimes he who is cast outside is within, and he who is outside appears to be retained within.

C. VIII. Both he who is separated from the faithful by open sacrilege and he who is separated by a perverse life are proved not to pertain to the church.

Likewise Augustine, [sermon 11 *On the Words of the Lord*]. Concerning those who are separated from the church, he does not say, "Not perceiving the things that are of the Spirit," lest it be referred to the perception of knowledge; but it was said: "Not having the Spirit." § 1. This assuredly would not be said except of persons separated from the church, who were said not to possess the Spirit. But neither is he to be said to be in the church and to pertain to this fellowship of the Spirit who is mingled with Christ's sheep with a feigned heart. "For the Holy Spirit of discipline will flee deceit." For not only do those not pertain to the church who are manifest through the open sacrilege of separation, but also those who, bodily mingled in her unity, are separated through a most evil life.

C. IX. We separate from God those whom we show to be impious.

Likewise from the Fifth Synod, [conference 5]. It is certain that one who has been shown to be impious is altogether separated from God, just as one who has been anathematized as impious is also separated. For anathema signifies nothing other than separation from God. PART III. GRATIAN. Therefore, as appears from the foregoing, an unlawful excommunication does not injure him who is marked but him by whom he is marked; and through this, those who are innocent cannot be condemned for another's crime, as the households of powerful men are accustomed to be marked by the imprudent for the sins of their lords. But it is further objected that not only the innocent but not even criminals are to be struck by a sentence of malediction. For Christ says in the Gospel: "Pray for those who persecute and calumniate you; do good to those who hate you." Likewise the Apostle: "Bless those who persecute you; bless and do not curse." Likewise: "Revilers will not possess the kingdom of God."

C. X. The faithful ought to be free from every curse.

Likewise Jerome in the epistle to Titus, [at the beginning of c. 3]. If, therefore, Michael did not dare to bring a judgment of blasphemy against the devil, who is certainly most worthy of a curse, how much more ought we to be pure from every curse? The devil deserved a curse, but blasphemy ought not to have gone forth through the mouth of an archangel. Read again the ancient books and see which tribes were placed upon Mount Gerizim to bless the people and which upon the other mountain to curse. Reuben, who had defiled his parent's bed, and Zebulun, the last son of Leah, and the children of the handmaids are placed upon Mount Ebal so that they might curse those who are worthy of a curse.

C. XI. Whom those chosen from the sons of Israel for blessing and those chosen for cursing signify.

The same in the book of Judges. Therefore, since among the individual faithful there is such diversity of purpose, it appears to me that this is signified in this place: that those halves who walk beside Mount Gerizim—the one chosen for blessing—figuratively indicate those who come to salvation not from fear of punishment but from desire for blessings and promises; but those other halves who walk beside Mount Ebal, upon which the curses were pronounced, indicate those others who, by fear of evils and dread of punishments, fulfill the things written in the law and come to salvation. GRATIAN. But he who commanded prayer for persecutors struck our first parents with the curse of death for transgression of the command. Cain too, because he added fratricide to the first transgression, received back a sentence of malediction from the Lord. The Lord also said to Abraham: "I will curse those cursing you, and I will bless those blessing you." In the Gospel too, when he came hungry to a fig tree and did not find fruit upon it, by his curse he condemned it to perpetual sterility. § 1. Likewise Noah, when he learned that his shameful parts had been mocked by Ham, cursed his son Canaan, saying: "Cursed be Canaan; let him be the servant of his brothers." Likewise Isaac, when he blessed his son Jacob, said: "He who shall have cursed you, let him be cursed; and he who shall have blessed you, let him be filled with blessings." § 2. Likewise, as is read in the Book of Numbers, Moses, at God's command, divided the twelve tribes of the children of Israel into two parts and ordered six tribes, walking beside Mount Ebal, to proclaim aloud the curse of those transgressing the law; but he commanded the others, walking beside the other mountain, to cry aloud the blessings of

those observing it. § 3. In the New Testament too the Apostle Peter is read to have cursed Simon when he said: "Let your money be with you unto perdition." Paul too, who had said, "Bless and do not curse," ordered the Corinthian fornicator to be excommunicated. Likewise, in another epistle he says: "If anyone shall not have followed the doctrine of our Lord Jesus Christ, let him be anathema, maranatha." Likewise to the Galatians: "If an angel coming from heaven shall have evangelized to you anything other, let him be anathema." § 4. A distinction, therefore, is to be made between the curse that is prohibited and the curse that is rationally pronounced by the Lord and by holy men. The curse that is prohibited is that which proceeds from a desire for vengeance and hatred of the persecutor, not from love of justice. But the curse by which the saints curse is that which proceeds from love of justice, not from the spite of vengeance. Hence Gregory says in Book III of the *Morals*:

C. XII. Holy men curse certain persons not from a desire for vengeance but from love of justice.

When holy men pronounce a sentence of malediction, they burst forth into it not from a desire for vengeance but from an examination of justice. Inwardly they regard the subtle judgment and recognize with what curse they ought to strike the evils arising outwardly; and they do not sin by that curse in which they do not disagree with the inner judge. Likewise: § 1. Sacred Scripture recalls a curse in two ways: namely, one that it approves and another that it condemns. For a curse is pronounced in one way by a judgment of justice, as it was pronounced against the very first sinner when he heard: "Cursed is the earth in your work, etc.," and as it is said to Abraham: "I will curse those cursing you." But in another way a curse is pronounced that is brought forth not by a judgment of justice but by the spite of vengeance; we are admonished to cease from this by the voice of Paul preaching, who says: "Bless and do not curse."

C. XIII. Those who err and those who send others into error are to be excommunicated.

Likewise Pope Pelagius to Bishop Angellius. By the example of apostolic authority we have learned that the spirits of those who err and send others into error are to be handed over to Satan, so that they may unlearn blasphemy.

C. XIV. Offenders are to be corrected by priests; if they are found incorrigible, they are to be excommunicated.

Likewise Pope Anacletus, [epistle 3]. Both priests and all the rest of the faithful ought to have the greatest care for those who are perishing, so that either they may be corrected from their sins by their reproof, or, if they appear incorrigible, may be separated from the church.

C. XV. After a second or third admonition has intervened, let the sentence of excommunication proceed.

Likewise Gregory, [Pope Gregory, Book II, epistle 37, to Bishop Natalis]. Your Beatitude complains without merit concerning the clause of excommunication—which nevertheless, after the condition of grade had been interposed, was annexed for the second or third time now, so to speak, from necessity —since the Apostle Paul says: "Having in readiness to avenge every disobedience."

C. XVI. The evil are to be eliminated from the church.

Likewise Jerome, [on the Epistle to the Galatians, c. 5]. Rotten flesh is to be cut away, and a mangy sheep is to be driven from the folds, lest the whole house, lump, body, and flock burn, be corrupted, rot, and perish. Arius was one spark in Alexandria, but because it was not immediately extinguished, its flame laid waste the whole world.

C. XVII. Subjects are to be corrected by their prelates differently according to the diversity of their faults.

Likewise Augustine, [in the book *On Rebuke and Grace*, c. 15]. Therefore, let subjects be corrected by their prelates with different corrections proceeding from charity, lesser or greater according to the diversity of their faults, because even that which is called condemnation, which episcopal judgment effects—a penalty greater than which there is none in the church—can, if God wills, turn out and advance toward a most salutary correction. For we do not know what may happen on the following day. Or must one despair concerning anyone before the end of this life? Or can God be contradicted, so that he should not look upon him and give him repentance and, after receiving the sacrifice of a troubled spirit and a contrite heart, absolve from the guilt of even a just condemnation the condemned man whom he himself does not condemn? Nevertheless, the necessity of the shepherd requires that, lest dreadful contagions creep through many, he separate the diseased sheep from the healthy ones, perhaps to be healed by that very separation by him to whom nothing is impossible. For, not knowing who pertains to the number of the predestined and who does not pertain, we ought to be affected by the disposition of charity in such a way that we will all to be saved.

C. XVIII. Those who are unwilling to be corrected ought to be cut off by the iron of excommunication.

Likewise Prosper, [Book *On the Contemplative Life*, c. 7]. But behold, if the crimes of any persons—when the criminals themselves are unwilling to confess—become known from any source, whatever crimes have not been healed by the gentle medicine of patience are to be burned and treated, as it were, by a certain fire of pious rebuke. But if the remedy of one enduring calmly and rebuking piously has not advanced among those who, after having been borne with for a long time and rebuked wholesomely, have been unwilling to be corrected, they ought to be cut off by the iron of excommunication like parts of a putrid body; lest, just as flesh deadened by diseases, if it shall not have been cut off, corrupts the health of the remaining flesh by the contagion of its putrefaction, so these persons who disdain to be amended and persist in their disease, if they remain in the fellowship of the holy with depraved morals, should kill them by the example of their perdition.

C. XIX. He who presumes to have two wives at the same time is to be excommunicated.

Likewise Pope Nicholas to King Lothair. Are you not to be struck by strict vengeance, you who are recognized to have imitated Lamech's adultery and flagitious deed in two wives? The Lord did not destroy this until seventy-seven generations later by his saving advent, whereas Cain's fratricide was abolished in the seventh generation by the waters of the cataclysm.

C. XX. False witnesses and homicides are to be deprived of communion.

Likewise from the Council of Agde, [c. 37]. Therefore, we have decreed that homicides and false witnesses are to be removed from ecclesiastical communion unless they wash away the crimes committed by the satisfaction of penance.

C. XXI. Let a powerful man who presumes to despoil a poor cleric or religious be excommunicated.

Likewise from the First Council of Toledo, [c. 11]. If any of the powerful shall have despoiled a cleric, any poorer person, or a religious, and the bishop shall have commanded him to come to him so that he may be heard, and he shall have despised the command, let written notices at once pass in turn among all the bishops of the province and whomever they shall have been able to reach, so that he himself may be regarded as excommunicated until he obeys and restores the property of another.

[PALEA.

C. XXII. On the same matter.

From the sayings of Pope Gregory. Whoever deceitfully lays his hand upon the Lord's anointed—that is, a bishop or presbyter—because he commits grave sacrilege, and if anyone lays waste, attacks, or burns the church of God, because this too is most grave sacrilege, it pleased the holy synod that first all his goods be made public by proscription; then, enclosed in one place—that is, in a monastery—let him do penance all the days of his life.]

C. XXIII. Let one who presumes to molest pilgrims to Rome, other pilgrims, or merchants be deprived of communion.

Likewise Pope Callixtus. If anyone shall have attempted to capture pilgrims to Rome and other pilgrims visiting the thresholds of the Apostles and the oratories of other saints, or to despoil them of the things that they carry, or to molest merchants with new exactions of tolls and road dues, let him lack Christian communion until he has made satisfaction.

C. XXIV. Let one who presumes to harass pilgrims and churches, their goods, and the persons serving there be excommunicated.

Likewise Urban. Admonished by the examples of paternal traditions and discharging the debt of pastoral office, we establish that churches with their goods, both persons and possessions—namely, clerics and monks and their converts—and also pilgrims with the things that they carry are to be safe and without molestation. But if anyone shall have presumed to act against this and, after he has recognized his crime, shall not have amended it competently within the space of thirty days, let him be barred from the thresholds of the church and struck by the sword of anathema.

C. XXV. Let those who meet pilgrims or unarmed poor persons for evil be excommunicated.

Likewise Pope Nicholas to all bishops. Those who shall have plundered travelers or pilgrims to any saint—whether clerics, monks, women, or unarmed poor persons—or shall have seized their goods or met them for evil are to be struck by the bond of anathema unless they make worthy amends. § 1. But let that peace which we call the truce of God be observed just as it has been established by the archbishops of each province. But whoever breaks it is to be subjected to excommunication. PART IV.

GRATIAN. But because the discussion concerns heretics, it must be seen what the difference is between schism and heresy, who are heretics, and how many sects of heretics there are. Jerome assigns the difference between schism and heresy in the epistle to the Galatians, saying:

C. XXVI. The difference between schism and heresy.

I judge this to be the difference between heresy and schism: heresy possesses a perverse dogma; schism separates from the church because of episcopal dissension. This can indeed be understood to differ in some part at the beginning; but no schism fails to fashion some heresy for itself, so that it may appear to have withdrawn from the church rightly. Moreover, Jerome defines in the same epistle whence heresy is so called, saying:

C. XXVII. Whence is heresy so called?

Heresy in Greek is so called from choice, because each person chooses for himself that discipline which he thinks is better. Therefore, whoever understands Scripture otherwise than the meaning of the Holy Spirit, by whom it was written, demands, although he has not withdrawn from the church, can nevertheless be called a heretic; and he is among the works of the flesh, choosing those things that are worse. PART V. GRATIAN. But showing who are properly called heretics, Augustine says, [in the book *On the Usefulness of Believing*, c. 1]:

C. XXVIII. Who are properly called heretics.

A heretic is one who, for the sake of some temporal advantage and especially of his own glory and primacy, either begets or follows false and novel opinions. But he who believes men of this kind has been deceived by a certain appearance of truth.

C. XXIX. Those who are seduced into error not by their own audacity but by another's are not heretics.

The same, [to Glorius, Eleusius, and others, epistle 162]. The Apostle said: "Avoid a heretical man after the first and second correction, because such a man is subverted and sins, condemned by himself." But those who defend their opinion, although false and perverse, with no obstinate animosity—especially an opinion that they produced not by the audacity of their own presumption but received from parents who had been seduced and fallen into error—and who seek the truth with cautious solicitude, prepared to be corrected when they find it, are by no means to be reckoned among heretics.

C. XXX. Those who despise the discipline of truth become masters of error.

Likewise Leo, [Pope Leo, epistle 10 to Flavian]. But what is more iniquitous than to hold impious opinions and not to believe those who are wiser and more learned? But those fall into this folly who, when they are hindered by something obscure from recognizing the truth, recur not to the prophetic voices, not to the apostolic letters, nor to the evangelical authorities, but to themselves; and therefore they become masters of error because they were not disciples of truth.

C. XXXI. Those who obstinately defend what they perversely think are heretics.

Likewise Augustine against the Manichaeans. Those who think something diseased and perverse in the church of Christ, if, when corrected so that they might think what is sound and right, they resist obstinately and are unwilling to amend their pestiferous and death-bearing dogmas but persist in defending them, are heretics.

C. XXXII. One who defends the error of a person who errs is more condemnable than he.

Likewise Pope Urban. He who defends the error of others is much more condemnable than those who err, because not only does he err, but he also prepares stumbling blocks of error for others and confirms them. Hence, because he is a master of error, he is to be called not only a heretic but even a heresiarch.

C. XXXIII. Those who change truth into a lie are proved to move the boundaries of the fathers.

Likewise Jerome, [Book II of the commentary on Hosea c. 5]. The princes of Judah move the boundaries that their fathers established when they change truth into a lie and preach something other than what they received from the Apostles. The same: § 1. Concerning heretics the meaning is manifest: that by their sophisms and dialectical art they often oppress ecclesiastical men. The same: § 2. In searching the ancient histories, I cannot find any who tore the church and seduced peoples from the house of the Lord except those who had been established by God as priests and prophets—that is, watchmen. Therefore, these are turned into a crooked snare, placing a stumbling block in every place.

C. XXXIV. Let those who agree with the depravity of adversaries be cast out.

Likewise Pope Leo, [epistle 74 to Anatolius]. I signify that this assuredly displeases me greatly: that among the clerics of your jurisdiction certain persons are said to exist who agree with the depravity of the adversaries, and vessels of mercy are mingled with vessels of madness. Your diligence ought vigilantly to persist in investigating them and restraining them with fitting severity, in such a way that excision does not spare those whom correction could not benefit. For it is fitting for us to remember the evangelical command which is prescribed by the Truth itself: that if our eye, foot, or right hand shall have scandalized us, it is to be removed from the joining of the body, because it is better to lack these members in this age than to go with them into eternal torments. For in vain do we resist those placed outside the church if we are wounded, in those whom they deceive, by those who are within. This pestiferous patience, which by sparing the sins of others does not spare itself, is wholly to be cast away from priestly vigor.

C. XXXV. Clerics ought to avoid both the associations and banquets of heretics.

Likewise from the Fourth Council of Carthage, [cc. 70, 71, 72]. Let a cleric equally avoid both the banquets and associations of heretics or schismatics. Their assemblies are to be called not churches but conventicles. One is neither to pray nor to sing psalms with them.

C. XXXVI. Observers of the canons ought to enter into no contest with heretics.

Likewise Pope Gelasius, [in the epistle to the bishops of Dardania]. With whom was a synod to be entered into? Catholic pontiffs had already been driven away on every side; only the associates of the faithless remained, with whom it was no longer lawful even to have an assembly, as the Psalm says: "I have not sat with the council of vanity, and I will not enter with those acting iniquitously." Nor is it the ecclesiastical custom to mingle a council with those who have a polluted communion mixed with the faithless. Rightly, therefore, according to the form of the Synod of Chalcedon, a prevarication of this kind was repelled rather than called to a council, which was neither necessary after the first synod nor lawful to have with such persons. The same, [in the instruction to Faustus]: § 1. For us, as teachers and guardians of the canons, it is not lawful to enter into any contest with men of an alien communion.

C. XXXVII. He who excommunicates the evil does not contradict the Gospel but rather obeys it.

Likewise from an epistle of Pope Urban. It is to be noted that certain persons say that we act contrary to the evangelical parable where the Lord commanded that the tares not be uprooted, when we subject to excommunication persons worthy of excommunication; and they say that Saint Augustine also contradicts this in the place where he says: "Because unity is not to be cut apart, the evil are to be borne with, not cast out." To these this must first be answered: if heretics and evil men are not to be excommunicated, why did that holy father Augustine himself, with the legates of the holy Roman church and with his holy fellow bishops, excommunicate Pelagius and Celestius, who were introducing a new heresy into the holy church of God, and separate them from the church of God? Why did both he and the entire church of God hold as excommunicated the Donatists themselves, against whom he speaks these and many things similar to them, and by no means communicate with them unless they had first performed penance and been reconciled through the imposition of hands? The same Lord himself, who expounds this here parabolically, elsewhere openly commands excommunication to be done, saying: "A brother who is rebuked by the church and does not obey, let him be to you as a gentile and a publican." Hence it appears plainly that excommunication is one thing and uprooting another. For he who is excommunicated—as the Apostle says—is excommunicated for this purpose: that his spirit may be saved on the day of the Lord. For excommunication is discipline, not uprooting, [GRATIAN.] unless perhaps uprooting results from the contempt and pride of the excommunicated person. Hence Augustine in the book on Numbers, [homily 15, on c. 23]:

C. XXXVIII. A divine curse designates the desert of the one cursed.

In those whom God curses, he designates the desert of the person who is cursed and pronounces sentence, seeing that neither the quality of the sin nor the disposition of the sinner deceives him. Because man cannot know this—for one person can neither see nor know the purpose and mind of another—therefore, even if he pronounces a curse from the perspective of one judging or pronouncing sentence, there can be no cause for cursing where the disposition of the sinner is unknown, especially since human vice then knows how to pronounce curses when perhaps it is provoked by insults or injuries. Wishing to cut away this vice, the Apostle establishes a necessary command that we bless, lest we provoke curses with curses and insults with insults, not so that the

truth of judging—which lies hidden from men—and the authority of pronouncing sentence should be destroyed. GRATIAN. But how many sects of heretics there are and whence they received their names Isidore determines in Book VIII of the *Etymologies*, c. 5, saying:

C. XXXIX. How many sects of heretics there are.

Some heretics who have withdrawn from the church are named from the names of their founders, while others are named from the causes that they established by choosing them. § 1. The Simonians are so called from Simon, a man skilled in the magical discipline, whom Peter cursed in the Acts of the Apostles because he wished to buy the grace of the Holy Spirit from the Apostles with money. They say that creation is not from God, but was created by a certain supernal power. § 2. The Menandrians are named from Menander the magician, Simon's disciple, who asserted that the world was made not by God but by angels. § 3. The Basilidians are named from Basilides, who, among his other blasphemies, denied that Jesus suffered. § 4. The Nicolaitans are so called from Nicolas, a deacon of the church of Jerusalem who was appointed by Peter with Stephen and the others. Because of her beauty, he abandoned his wife and said that whoever wished might use her; such a custom was turned into debauchery, so that marriages were exchanged among them. John reproves them in the Apocalypse, saying: "But this you have, that you hate the deeds of the Nicolaitans." § 5. The Gnostics wished to call themselves this because of the excellence of knowledge. They say that the soul is the nature of God; in their dogmas they fashion a good God and an evil God. § 6. The Carpocratians are named from a certain Carpocrates, who said that Christ was merely a man and was begotten of both sexes. § 7. The Cerinthians are named from a certain Cerinthus. Among other things, they observe circumcision and preach that after the resurrection there will be a thousand years in the pleasure of the flesh. Hence they are called Chiliasts in Greek and Millenarians in Latin. § 8. The Nazarenes are so called because, although they confess Christ—who was called a Nazarene from the village—to be the Son of God, they nevertheless observe everything in the old law. § 9. The Ophites are named from the serpent, for a serpent is called *ophis* in Greek. They worship the serpent, saying that in paradise it introduced the knowledge of virtue. § 10. The Valentinians are named from a certain Valentinus, a follower of Plato, who introduced aeons—that is, certain ages—into the origin of God the Creator; he also asserted that Christ assumed nothing bodily from the Virgin, but passed through her as though through a pipe. § 11. The Apellites, whose principal founder was Apelles, made the Creator some glorious angel—I know not whom—of the higher God and, affirming that the God of the law of Israel was that fiery one, said that Christ appeared not as God in truth but as a man in appearance. § 12. The Archontics are named from rulers, because they maintain that the universe which God founded is the work of archangels. § 13. The Adamites are so called because they imitate Adam's nakedness. Hence they pray naked, and naked men and women assemble together. § 14. The Cainites are so called because they worship Cain. § 15. The Sethians received their name from Adam's son, who was called Seth, saying that he is Christ. § 16. The Melchizedekians are so called because they think that Melchizedek, the priest of God, was not a man but a power of God. § 17. The Angelics are so called because they worship angels. § 18. The Apostolics assumed this name for themselves because, possessing nothing of their own, they do not receive those who use anything in this world. § 19. The Cerdonians are named from a certain Cerdo, who asserted two contrary principles. § 20. The Marcionites are named from Marcion, a Stoic philosopher, who, following Cerdo's dogma, asserted that one God was good and another just, as though there were two principles of creation and

goodness. § 21. The Artotyrites are named from their offering, for they offer bread and cheese, saying that the first human beings celebrated an offering from the fruits of the earth and the fruits of sheep. § 22. The Aquarians are so called because they offer only water in the sacramental chalice. § 23. The Severians, sprung from Severus, do not drink wine and do not receive the Old Testament or the resurrection. § 24. The Tatians are named from Tatian; they are also called Encratites because they abhor meats. § 25. The Alogians are called as though "without the Word," for *logos* in Greek means "word." They do not believe in God the Word, rejecting John's Gospel and the Apocalypse. § 26. The province of Phrygia gave the Cataphrygians their name, because their founders Montanus, Prisca, and Maximilla arose there. They assert that the coming of the Holy Spirit was handed down not in the Apostles but in themselves. § 27. The Cathari named themselves thus because of purity: glorying in their merits, they deny the pardon of sins to penitents; they condemn widows as adulteresses if they marry; and they proclaim themselves purer than others. If they wished to recognize their own name, they would call themselves worldly rather than pure. § 28. The Paulianists sprang from Paul of Samosata, who said that Christ did not always exist but took his beginning from Mary. § 29. The Hermogenians are named from a certain Hermogenes, who introduced unbegotten matter, compared it with the unbegotten God, and asserted that it was the mother of the elements and a goddess; the Apostle reproves those who serve the elements. § 30. The Manichaeans arose from a certain Persian called Manes. He introduced two natures and substances, namely, a good one and an evil one, and asserted that souls flow from God as though from a certain spring; they reject the Old Testament and receive the New in part. § 31. The Anthropomorphites are so called because in rustic simplicity they think that God has the human members that are written of in the divine books; for *anthropos* in Greek is translated "man" in Latin. They are ignorant of the Lord's declaration, "God is spirit." For he is incorporeal: he is neither distinguished by members nor measured by bodily bulk. § 32. The Hieracites sprang from Hieracas their founder; they receive only monks, reject marriages, and do not believe that little children possess the kingdom of heaven. § 33. The Novatians sprang from Novatus, a presbyter of the city of Rome, who, after attempting to seize the sacerdotal chair against Cornelius, established a heresy, refused to receive apostates, and rebaptized the baptized. § 34. The Montani are called heretics because during a persecution they hid in the mountains, on which occasion they separated themselves from the body of the Catholic Church. § 35. The Ebionites are named from Ebion, or from poverty, for they think that Christ was made a just man only through advancement. Hence they are fittingly called Ebionites because of their poverty of understanding. For they are Jews, and they hold the Gospel in such a way as to observe the law carnally; the Apostle inveighs against them when writing to the Galatians. § 36. The Photinians are named from Photinus, bishop of Sirmium in Gallograecia; reviving the heresy of the Ebionites, he asserted that Christ was conceived by Mary from Joseph through marital intercourse. § 37. The Haerians are named from a certain Haerius; they scorn to offer sacrifice for the dead. § 38. The Aetians are named from Aetius and are also called Eunomians from a certain dialectician Eunomius, a disciple of Aetius, by whose name they became better known; they assert that the Son is unlike the Father and the Holy Spirit unlike the Son. They also say that no sin is imputed to those remaining in the faith. § 39. The Origenists sprang from Origen their founder, saying that the Son cannot see the Father, nor the Holy Spirit the Son. They also say that souls sinned at the beginning of the world and, according to the diversity of their sins, merited diverse bodies as bonds from heaven down to earth, and that for this reason the world was made. § 40. The Noetians are named from a certain Noetus, who said that Christ is himself both

the Father and the Holy Spirit, and they understand the Trinity itself in names of offices, not in persons. Hence they are also called Patripassians, because they say that the Father suffered. § 41. The Sabellians are said to have sprouted from the same Noetus, whose disciple Sabellius is reported to have been; they became especially known from his name and hence are called Sabellians. They assert one person of the Father, the Son, and the Holy Spirit. § 42. The Arians sprang from Arius, a presbyter of Alexandria, who, not acknowledging the Son as coeternal with the Father, asserted diverse substances in the Trinity, contrary to what the Lord says: "I and the Father are one." § 43. The Macedonians are named from Bishop Macedonius; they deny that the Holy Spirit is God. § 44. The Apollinarists are named from Apollinaris; they say that Christ assumed only a body without a soul. § 45. The Antidicomarianites are so called because they contradict Mary's virginity, asserting that after Christ was born she had intercourse with her husband. § 46. The Metangismonites received such a name because *angeion* means "vessel" in Greek. They assert that the Son is in the Father as a smaller vessel within a larger vessel. § 47. The Patricians are named from a certain Patricius; they say that the substance of human flesh was founded by the devil. § 48. The Coluthians are named from a certain Coluthus; they say that God does not make evils, contrary to what is written: "I, the Lord, creating evils." § 49. The Florinians are named from Florinus; on the contrary, they say that God created evils, contrary to what is written: "God made all things good." § 50. The Donatists are named from a certain African Donatus who, coming from Numidia, deceived almost all Africa by his persuasion, asserting that the Son is less than the Father and the Holy Spirit less than the Son, and rebaptizing Catholics. § 51. The Bonosians are reported to have sprung from a certain bishop Bonosus; they assert that Christ is the adoptive, not the proper, Son of God. § 52. The Circumcellions are so called because they are rustics, whom they call Cotopitae, holding the teaching of the aforesaid heresy. Through love of martyrdom they kill themselves so that, departing violently from this life, they may be called martyrs. § 53. The Priscillianists are named from Priscillian, who in Spain composed a dogma mixed from the error of the Gnostics and Manichaeans. § 54. The Luciferians arose from Lucifer, bishop of Sirmium. The Catholic bishops who, under the pressure of persecution, had consented to the unbelief of the Arians and afterward, once corrected and condemning what they had believed or dissembled having believed, chose to return to their chairs, the Catholic Church received into her maternal bosom as Peter was received after he wept for his denial. But the Luciferians, receiving this motherly charity with disdain and refusing to receive them, withdrew from the church's communion; and with Lucifer himself, their founder who arose in the morning, they merited to fall. § 55. The Jovinianists are named from a certain monk Jovinian; they assert that there is no difference between marriage and virginity, and no distinction between those who abstain and those who feast without restraint. § 56. The Helvidians are named from Helvidius; they say that after Christ was born Mary bore other sons by her husband Joseph. § 57. The Paternians sprang from a certain Paternus; they suppose that the lower parts of the body were made by the devil. § 58. The Arabians are so called because they arose in Arabia; they say that the soul dies with the body and that both rise again at the last day. § 59. The Tertullianists are named from Tertullian, a presbyter of Carthage, a city of the province of Africa; they proclaim that the soul is immortal but corporeal and think that the souls of sinful persons are turned into demons after death. § 60. The Quartodecimans are so called because they contend that Passover is to be observed with the Jews on the fourteenth moon. For *tessera* signifies four and *deka* ten. § 61. The Nyctages are named from sleep because they reject nocturnal vigils, saying that these are superstition and that the divine laws, which allotted the

night for rest, are violated. § 62. The Pelagians sprang from the monk Pelagius. They place free choice before divine grace, saying that the will suffices to fulfill the divine commands. § 63. The Nestorians are named from Nestorius, bishop of Constantinople, who asserted that the Blessed Virgin Mary was not the mother of God but only of a man, so that he made one person of the flesh and another of the Godhead; he did not believe in one Christ in the Word of God and the flesh but separately and disjointedly proclaimed one to be the Son of God and the other the son of man. § 64. The Eutychians are named from Eutyches, abbot of Constantinople, who denied that after the assumption of humanity Christ existed from two natures, but asserted that in him there was only the divine nature. § 65. The Acephalites are so called—that is, "without a head"—for no founder from whom they arose is found. These opponents of the three Chapters of Chalcedon deny the proper character of two substances in Christ and proclaim one nature in his person. § 66. The Theodosians and Gaianites are named from Theodosius and Gaianus, who in the time of Emperor Justinian were ordained bishops in Alexandria on one day by the election of the perverse people. Following the errors of Eutyches and Dioscorus, they reject the Council of Chalcedon and assert one nature in Christ from two; the Theodosians contend that it is corruptible, the Gaianites that it is incorruptible. § 67. The Agnoetae and Tritheites sprang from the Theodosians. Of these the Agnoetae are named from ignorance, because they add to the perversity from which they arose that Christ's divinity is ignorant of future things, which are written concerning the last day and hour, not remembering the person of Christ speaking in Isaiah: "The day of judgment is in my heart." § 68. The Tritheites are so called because, just as they assert that there are three persons in the Trinity, so too they assert that there are three Gods, contrary to what is written: "Hear, Israel: the Lord your God is one God." § 69. There are also other heresies without founders and without names. Some of these think that God is threefold; others say that Christ's divinity is passible; others assign a beginning in time to Christ's birth from the Father; others do not believe that the liberation of human beings in the lower regions was accomplished by Christ's descent; others deny that the soul is the image of God; others think that souls are converted into demons and every kind of animal; others dissent concerning the state of the world; others suppose that there are innumerable worlds; others make water coeternal with God; others walk with bare feet; others do not eat with other human beings. These are the heresies that have arisen against the Catholic faith and were condemned beforehand by the Apostles and holy Fathers or councils. Although divided within themselves by many errors and dissenting from one another, they nevertheless conspire under a common name against the church of God. § 70. But whoever understands sacred Scripture otherwise than the meaning of the Holy Spirit, by whom it was written, demands, although he has not withdrawn from the church, can nevertheless be called a heretic.

C. XL. Why divine providence permits many to err.

Augustine, [*On Genesis Against the Manichaeans*, Book I, c. 1]. PART VI. Divine providence therefore permits there to be many heretics of diverse error, so that, when they question us about those things that we do not know, we may thus shake off sluggishness and desire the divine Scriptures. For this reason the Apostle says: "That those who are approved may be made manifest." Those who are able to teach well are approved by God.

Causa XXV

GRATIAN. The holy Roman Church fortified a certain baptismal church with its privileges, assigning to it in full the tithes of its diocese. It likewise fortified a certain monastery with its own privileges, decreeing that it should pay tithes to no one from its own estates. It therefore happened that within the diocese of the fortified baptismal church the aforesaid monastery acquired estates for itself, some by purchase and others by donation. A dispute therefore arises between the monks and clerics concerning the tithes. (Question I.) First it is now asked whether the clerics of the baptismal church can claim for themselves in full the tithes of their diocese by the authority of the privilege. (Question II.) Second, whether the later privilege of the monks derogates from the earlier privileges of the baptismal churches.

Question I

GRATIAN. PART I. That the clerics cannot claim the tithes for themselves in full by the authority of that privilege is proved from this: according to the decrees of the holy Fathers, tithes are divided into four parts, of which one part is assigned to bishops, the second to clerics, the third to restoring buildings, and the fourth to the poor. But no one ought to observe the decrees of the holy canons more than the Apostolic. Hence Pope Gelasius says, [in the epistle to the bishops of Dardania]:

C. I. The Roman See ought to observe the constitution of a synod that the consent of the universal church has approved.

We trust that no one who is truly a Christian is now ignorant that, before the other sees, none ought more to execute the constitution of each synod that the consent of the universal church has approved than the first see, which has both confirmed each synod by its authority and preserves it with continuous moderation.

C. II. One who negligently feeds the Lord's flock entrusted to him is proved not to love the supreme Shepherd.

Likewise Pope Leo, [epistle 4 to the bishops of Sicily]. We are incited by divine precepts and apostolic admonitions to watch over the condition of all the churches with an untiring disposition and, if anything is ever found liable to reproof, to recall it either from the unskillfulness of ignorance or from the usurpation of presumption. For by the command of the divine voice, by which the most blessed Apostle is instructed through a threefold repetition in mystical ordinances that he who loves Christ should feed Christ's sheep, we are exhorted by reverence for that see over which, through the abundance of divine grace, we preside, to avoid as far as we can the danger of sloth, lest the profession of the supreme Apostle, by which he testified that he loved the Lord, be found not to be in us, because one who negligently feeds the Lord's flock so often commended to him is proved not to love the supreme Shepherd.

C. III. Things ordained for perpetual peace ought not to be altered in any way.

The same to Bishop Anatolius, [epistle 51]. Let those things that have been ordained generally for perpetual advantage be varied by no change, nor let those things established for the common good be drawn to private advantage; but with the boundaries that the Fathers established remaining, let no

one unjustly usurp what belongs to another, but let each person exercise himself in the breadth of charity within his own proper and lawful bounds, as he shall be able.

C. IV. It is lawful for no one to violate divine constitutions and decrees of the Apostolic See.

Likewise Pope Hilary, [in the Roman Synod, c. 1]. Let it be lawful for no one, without danger to his status, to violate either divine constitutions or the decrees of the Apostolic See, because the guilt of such transgressions will regard us, who administer the offices of the most powerful priest, if we are found slothful in the causes of God, for we remember how God threatens the negligence of priests, which we ought to fear. Indeed, one who enjoys higher honor commits a greater offense by his guilt, and the loftiness of those sinning makes the vices of sinners more grave.

C. V. Those who violate the sacred canons blaspheme against the Holy Spirit.

Likewise Pope Damasus. Voluntary violators of the canons are judged gravely by the holy Fathers and are condemned by the Holy Spirit—by whose inspiration and gift they were dictated—because those who, not compelled by necessity but willingly, as was said above, act or presume to speak anything insolently against those same sacred canons, or freely consent to those who wish to do so, appear not unfittingly to blaspheme the Holy Spirit. For such presumption is manifestly one kind of blaspheming the Holy Spirit, because, as has already been touched upon, it acts against him by whose exertion and grace the holy canons were issued.

C. VI. In what matters the Roman Pontiff may establish new laws.

Likewise Pope Urban. There are some who say that it has always been lawful for the Roman Pontiff to establish new laws. This we not only do not deny, but also affirm very strongly. Yet it must above all be known that he can establish new laws concerning those matters about which the Evangelists said nothing at all. But where the Lord or his Apostles, and the holy Fathers following them, have openly defined something by a sentence, there the Roman Pontiff ought not to give a new law, but rather to confirm what has been preached even unto soul and blood. For if he should attempt—which may it not be—to destroy what the Apostles and Prophets taught, he would be proved not to give a sentence but rather to err. But let this be far from those who have always guarded the Lord's church most excellently against the snares of wolves.

C. VII. The authority of the Apostolic See cannot grant anything contrary to the statutes of the saints.

Likewise Pope Zosimus. Not even the authority of this see can grant or alter anything contrary to the statutes of the Fathers. For among us antiquity lives with unshaken roots, and the decrees of the Fathers have sanctioned reverence for it.

C. VIII. What has been done contrary to evangelical or prophetic teaching or constitution cannot stand.

Likewise Pope Marcellinus, [epistle 2]. The Catholic Church defends everything that is irreprehensible. And below: § 1. Let an unjust judgment and an unjust definition ordained by judges through royal fear or command have no force. What has been done contrary to evangelical, prophetic,

or apostolic teaching or their constitution, or that of the holy Fathers, will by no means stand; and what has been done by unbelievers or heretics will be made wholly void.

C. IX. The first salvation is not to deviate from the statutes of the Fathers and to preserve the rule of faith.

Likewise Pope Hormisdas, [to the bishops of Spain]. The first salvation is to preserve the rule of right faith and in no way to deviate from the constitutions of the Fathers.

C. X. Pelagius professes that he observes the Tome of his predecessor in all things.

Likewise Pelagius to King Childebert. We must endeavor, in order to remove the scandal of suspicion, to render the service of our confession to the laws to which sacred Scripture commands that even we be subject. For when Rufinus, a magnificent man and legate of Your Excellency, came, he confidently requested of us, as was fitting, that we ought either to signify to you that the Tome of Pope Leo of blessed memory is preserved by us in all things, or to send a confession of our faith in our own words. And because the first part of his request was easier, we fulfilled it at once, as he said, and by a profession of our own hand we signified to you that, with God's favor, I preserve in all things the Tome written by the Prelate for the assertion of the Catholic faith. But so that no occasion for suspicion—which may it not be—might thereafter remain, I hastened also to do that other part of which the aforesaid illustrious man admonished me: namely, I set forth in my own words the confession of faith that we hold.

C. XI. Let one who violates the censure of the Roman Pontiffs be made anathema before God.

Likewise Pope Hadrian, [in the Capitularies, last chapter]. By a general decree we establish that whoever among kings, bishops, or powerful persons shall henceforth believe or permit the censure of the decrees of the Roman Pontiffs to be violated in anything shall be made an execrable anathema and shall always stand guilty before God as a transgressor of the Catholic faith.

C. XII. It is not lawful for any bishop to act contrary to the decrees of the Roman Pontiffs.

Likewise Pope Damasus to Archbishop Stephen. We command that all decretal constitutions of all our predecessors that have been promulgated concerning ecclesiastical orders and the disciplines of the canons ought so generally to be observed by all bishops and priests that, if they commit anything against them, they should know that pardon concerning their honor will thereafter be denied them.

C. XIII. Let one who does not know how to obey the sacred canons not communicate at the sacred altars.

Likewise Gregory, [Book II, epistle 7, to Bishop John]. We sanction these things by a definition consonant with the holy Fathers: one who does not know how to obey the sacred canons is worthy neither to minister at the sacred altars nor to receive communion there.

C. XIV. The rules established by the holy Fathers in synod are to be observed.

Likewise from the Council of Chalcedon, [c. 1]. We establish that the rules brought forth until now by the holy Fathers in each synod are to be maintained.

C. XV. Let one who wishes his own statutes to be observed preserve the will and statutes of his predecessors.

Likewise Gregory to Montanus and Thomas, [Book V, epistle 12]. The order of justice and reason counsels that one who desires his commands to be observed by his successors should without doubt preserve the will and statutes of his predecessor.

C. XVI. One who does not preserve the statutes of the holy Fathers inviolate acts contrary to them.

Likewise Leo IV. We have therefore been made pastors of human beings by the Lord's permission, so that we ought in no way to transgress what our Fathers established either in the holy canons or in worldly laws. For we act contrary to their most salutary institutes if we do not preserve inviolate what they established by divine counsel. PART II. GRATIAN. Therefore, if the first see ought to observe the statutes of councils before all others; if it is necessary for it to watch over the condition of all the churches with an untiring disposition; if it is fitting that the things decreed by the Roman Pontiffs be observed by all; if those who do not know how to obey the sacred canons ought not to minister at the altars: it is evident that privileges by which the condition of the churches is confounded or disturbed ought not to be granted by the Apostolic contrary to the statutes of the holy canons. § 1. To these things answer is made thus: the sacrosanct Roman Church imparts right and authority to the sacred canons, but is not bound by them. For she possesses the right to establish canons, inasmuch as she is the head and hinge of all the churches, from whose rule no one is permitted to dissent. She therefore furnishes authority to the canons in such a way that she does not subject herself to them. But just as Christ, who gave the law, fulfilled that law carnally—being circumcised on the eighth day and presented with offerings in the temple on the fortieth day—so that he might sanctify it in himself, yet afterward, in order to show himself Lord of the law, cleansed a leper by touching him contrary to the letter of the law, and also excused the Apostles who, contrary to the letter of the sabbath, passed through the grainfields, plucked ears, and rubbed them in their hands, by the approved example of David, circumcision, and the temple, saying: "Have you not read what Abimelech did when David came to him, and he gave him the loaves of proposition, from which it was not lawful for any but the priests alone to eat, and he himself and his servants ate?" Likewise, a boy is circumcised on the eighth day according to the law, and you circumcise a man on the sabbath. Likewise, since a continual holocaust was offered under the law, and since, according to the law's command, a male on the fortieth day and a female on the eightieth day from the beginning of birth was presented with offerings in the temple—whence the priests offering sacrifices in the temple relax the letter of the sabbath and are without crime—then much more can the Son of Man relax the letter of the law, who is Lord even of the sabbath. Hence it is also said of him: "Jesus was teaching as one having authority," that is, as Lord of the law, adding to the moral precepts those things that were lacking for perfection, changing the shadow of figurative things into the light of spiritual understanding, not as their scribes, who, bound by the letter of the law, did not dare to add or alter anything. Thus also the pontiffs of the supreme see show reverence to canons established by

themselves or by others through their authority, and by humbling themselves to them they observe those canons, so that they may present them to others as things to be observed. Sometimes, however, whether by commanding, defining, decreeing, or acting otherwise, they show themselves to be lords and founders of the decrees. In the chapters set forth above, therefore, the necessity of obeying is imposed upon others, but the authority of observing is shown to belong to the supreme Pontiffs, so that by observing what was handed down by them they may demonstrate to others that it is not to be contemned, after the example of Christ, who first received in himself the sacraments that he commanded the church to observe, so that he might sanctify them in himself. Therefore, as we have said, the first see ought to observe the things that it commanded by decreeing, not through the necessity of obeying but through the authority of imparting. It is therefore lawful for it to grant special privileges contrary to general decrees and by a special benefit to grant what is prohibited by a general decree. § 2. Although, if we diligently attend to the intention of the decrees, they are found to grant nothing at all contrary to the authority of the holy canons. For the sacred canons constitute something in such a way as to reserve the authority of their interpretation to the holy Roman Church. Indeed, those alone can interpret the canons who possess the right to establish them. Hence in some chapters of councils, when something is decreed to be observed, it is immediately added: "Unless the authority of the Roman Church shall have commanded otherwise," or: "The right of the holy Roman Church nevertheless being preserved in all things," or: "The apostolic authority nevertheless being preserved in all things." Therefore, whatever is defined by the sacred canons concerning tithes or any ecclesiastical affairs is to be understood as necessarily observed unless the authority of the Roman Church commands or permits it to be done otherwise. Therefore, when certain privileges are granted to some persons by the Apostolic, although they appear to sound something contrary to the general law, they are nevertheless not understood to grant anything contrary to that law, since by the authority of the law itself the privileges of individuals are reserved to the mother of all the churches. For privileges would not be granted to anyone if nothing special beyond the general law were granted to anyone. Indeed, they are called privileges as though private laws, because they generate a private law for individuals. Gregory, intimating this distinction, says: "If you claim this neither by general custom nor by privilege, it remains that you have usurped what you did." § 3. Likewise Jerome in his exposition of Jonah, [on c. 1]: "The privileges of individuals cannot make a common law." § 4. Therefore, as is gathered from the foregoing, the holy Roman Church has power to fortify any persons with her privileges and to grant certain things beyond the general decrees by a special benefit, provided nevertheless that the equity of reason is considered, so that she who is the mother of justice may be found to dissent from it in nothing—namely, so that privileges granted for the sake of religion, necessity, or service rendered do not, by relieving anyone, make him so rich that, through failure to consider the losses of many, they cast some into the misery of poverty—calling to mind that saying of the Apostle, who wrote to the Corinthians: "For we do not wish that there be relief for others but tribulation for you." The sacred law of the princes, agreeing with this, says: "We command that rescripts elicited contrary to law be rejected by all judges, unless perhaps there is something that does not injure another and benefits the petitioner, or grants indulgence for a crime to the suppliants." § 5. Likewise a constitution of the emperor to the people: "Neither things harmful to the fisc nor things contrary to law ought to be requested." § 6. Therefore, the clerics of this baptismal church, fortified by the authority of the privilege, can claim for

themselves in full the tithes of their diocese, unless perhaps the bishops are compelled by extreme necessity to receive their quarter and those clerics are shown to possess a surplus.

Question II

GRATIAN. PART I. That later privileges cannot derogate from earlier ones is proved by the authority of Anacletus, who, writing to all bishops and the other priests of Christ, says, [in epistle 1, c. 37]:

C. I. Let the privileges of churches be preserved undefiled at all times.

We have decreed that the privileges of churches and priests remain undefiled and inviolate at all times. We confirm the laws of the church by apostolic authority, and we remove foreign judgments.

C. II. The privileges of churches ought neither to be altered by novelty nor overthrown by dishonesty.

Likewise Pope Leo to Emperor Marcian, [epistle 52, otherwise 54]. The privileges of churches and monasteries, established by the authority of the holy Fathers, can be overthrown by no dishonesty and altered by no novelty. In faithfully executing this work with Christ's aid, it is necessary that the pontiffs of this holy see exhibit persevering service. For a dispensation has been entrusted to us, and it tends to our guilt if the rules of paternal sanctions are violated with our consent or through our negligence.

C. III. No one ought to divest a church of the privilege of its dignity.

Likewise Gregory to Augustine, bishop of the English, [response 9]. We bestow no authority upon you over the bishops of Gaul, because from the ancient times of our predecessors the bishop of Arles received the pallium, and we ought by no means to deprive him of the authority he received. Therefore, if it should happen that Your Fraternity passes into the provinces of Gaul and something must be done by authority, let it be done with the aforesaid bishop of Arles, lest that which the ancient institution of the Fathers established be omitted. But we commit all the bishops of the Britons to Your Fraternity, so that the untaught may be taught and the weak strengthened by persuasion.

C. IV. The Apostolic ought not to destroy the statutes of his apostolic predecessors.

The same to Bishop Felix, [Book XII, epistle 31]. If I destroyed the things that our predecessors established, I would justly be proved to be not a builder but an overthrower, as the voice of truth testifies when it says: "Every kingdom divided against itself" will be made desolate, and every science and law divided against itself will be destroyed.

C. V. Let a metropolitan retain undefiled the right of the dignity handed down to him from antiquity.

Likewise Pope Leo, [epistle 82, otherwise 84, to Anastasius, c. 2]. Therefore, according to the canons of the holy Fathers, founded by the Spirit of God and consecrated by the reverence of the whole world, we decree that the metropolitan bishops of the individual provinces—over whom the care of Your Fraternity is extended by our delegation—shall possess undefiled the right of the dignity handed

down to them from antiquity, in such a way that they depart from the established rules through neither negligence nor presumption.

C. VI. The privileges of metropolitans ought to be preserved unshaken.

Likewise Pope Hormisdas, [in the epistle to Bishop John]. With the privileges of the metropolitans preserved, we delegate to you the office of the Apostolic See, so that, after these matters have been examined, both whether those things recently commanded by us are observed and whatever concerning ecclesiastical causes shall come to Your Revelation may be disclosed to us through your report. It will belong to your diligence and solicitude to show yourself in those things that are enjoined to be such that you imitate the faith and integrity of him whose care you undertake.

C. VII. Let apostolic decrees be violated by no presumption.

Likewise Gregory to Boniface, first defender, [Book VII, epistle 17]. We establish that the decrees of our institution, which have been arranged by privileges and ordination, are to be preserved with perpetual stability and without any opposition, whether those things that we decreed in writing or those that appear to have been arranged in our presence; and we decree that they are not to be overthrown or altered in whole or in part by any of the pontiffs on any occasion. For it is exceedingly harsh, and especially inimical to the good morals of priests, for anyone to strive under any pretext of reason to rescind things that have been well ordained and by his example to teach others that his own constitutions may sometimes be dissolved.

C. VIII. The Apostolic ought to preserve the privileges of churches unharmed.

The same to Dominicus, bishop of Carthage, [Book II, indiction 10, epistle 39]. Concerning ecclesiastical privileges, let Your Fraternity hold without hesitation what it writes: just as we defend our own rights, so we preserve their rights for each of the individual churches; nor, with favor prevailing, will I impart to anyone more than he merits, nor, with ambition urging, will I derogate from anyone what belongs to his right. Rather, I desire to honor my brothers in all things and for each to be sustained by honor, provided that there is nothing that one may rightfully oppose to another.

C. IX. What has been reasonably defined ought in no way to be violated.

Likewise to Vigilius, bishop of Arles, [Book VII, epistle 117]. Since the desire of a pious will and the intention of a praiseworthy definition are always to be aided by sacerdotal endeavors, the care of solicitude must be applied so that those things arranged or ordained for the peace of religious life can neither be neglected through dissimulation nor disturbed by any presumption; but just as what reason advantageously required obtained definition, so what has been defined ought not to be violated.

C. X. The Apostolic does injury to himself when he disturbs the rights of his brothers.

The same, [to Bishop Natalis, Book II, epistle 37]. As to what you say, that the things handed down or preserved by my predecessors also ought to be observed in our times: let it be far from me to

infringe the statutes of my forebears with respect to my fellow bishops in any church, because I do injury to myself if I disturb the rights of my brothers.

C. XI. Let those things established by the Apostles and their successors be violated by no presumption.

Likewise Pope Julius, [epistle 1 to the easterners, c. 4]. With every excess of usurpation cut away, let no one presume those things that do not appear to have been granted to him. § 1. Let the things established by the Apostles and their successors be neglected by no sloth, violated by no dissension, and disturbed by no contention.

C. XII. Things reasonably ordained ought to be disturbed by no opposition.

Likewise Pope Gregory, [Book VII, indiction 2, epistle 60, to the illustrious Praerectus]. It is altogether fitting to ecclesiastical moderation that the things that have been ordained or decided ought to be disturbed thereafter by no opposition.

C. XIII. Let things done contrary to the laws be regarded as not done.

The same in the Register, [Book VII, indiction 2, epistle 7, to Januarius of Cagliari]. It has been openly sanctioned by an imperial constitution that things done contrary to the laws are to be regarded not only as ineffectual but even as not done.

[C. XIV.]

From Book I of the Code, under the title *On Petitions to Be Offered to the Emperor*, Emperor Constantine. Things harmful to the fisc and things contrary to law ought not to be requested.

[C. XV.] Emperors Theodosius and Valentinian.

We command that rescripts elicited contrary to law be rejected by all judges, unless perhaps there is something that does not injure another and benefits the petitioner, or grants indulgence for a crime to the suppliants.

C. XVI. A rescript that accords with the principle of right and the laws merits effect.

Likewise Pope Pelagius to Count John. To the one saying that he had sacred commands before him, we responded that he ought to know that the most clement prince himself established by general laws that those sacred commands granted to the desire of each suppliant prevail and are committed to effect which accord with the principle of right and the laws; but those that perhaps are obtained by subreption or false petitions bring no remedy to the suppliants. GRATIAN. Rescripts, whether they are annotations or pragmatic sanctions, ought to have an express condition in themselves: "If the petitions rest upon truth." For a lying petitioner ought to lack the things obtained, and those to whom the writings are directed are to be punished if they have forbidden the falsehoods of the petitions to be challenged. Hence Emperors Diocletian, Maximian, and Constantius in Book I of the Code, under the title *If Contrary to Law or Public Utility*: § 1. "When an objection of falsehoods has been interposed—whether a falsehood is found in a narration of law or of fact, or in fraudulent silence—we command that the judge appointed ought to investigate according to the tenor of the truth, not the assertion of the petitioner, and in accordance with this it is fitting to render sentence concerning

the case." Likewise Emperor Constantine: "We command that judges who have forbidden the falsity of petitions to be challenged be punished by a fine of ten pounds of gold." Emperors Theodosius and Valentinian: § 3. "And if a lying petitioner shall present a sacred oracle consonant with the laws, let him wholly lack the things obtained; and if the liar's excessive dishonesty is found, let him also be subject to the severity of the judge." Likewise Constantine: § 4. "And if not investigation but execution is commanded, it is fitting that the truth of the petitions be investigated, so that if fraud intervenes, the whole matter may be investigated." Emperor Anastasius: § 5. "We admonish all judges of every greater or lesser administration of the entire commonwealth that they should permit no rescript, no pragmatic sanction, and no sacred annotation that appears adverse to general law or public utility to be produced in the adjudication of any litigation; but let them not doubt that the general sacred constitutions are to be observed in every way." Under the title of the Code *On Diverse Rescripts*, Emperors Diocletian and Maximian: § 6. "We sanction that the authentic and original rescripts themselves, even those signed by our hand, not copies of them, be formally presented." Emperor Constantine: § 7. "If any personal grants are discovered without day and consul, let them lack authority." Emperor Zeno: § 8. "We command that all rescripts—whether issued to the person of the petitioners or to any judge, whether called an annotation or any pragmatic sanction—be produced under this condition: 'If the petitions rest upon truth'; nor may the petitioner obtain any fruit of an oracle procured, although he asserts its truth in court, unless the question of the reliability of the petitions is shown to have been inserted in the imperial grant. For both the magnificent man the quaestor and the respectable masters of the bureaus who shall have dictated any divine response without the aforesaid addition, and the judges who shall have received it, will incur reproof; and the memorial clerks of any bureau, or pragmaticaries, or assistants to the *primicerius*, who shall have dared to write things unlawfully dictated will be struck with the loss of their belt."

C. XVII. The privileges of churches ought to be overthrown by no dishonesty.

Likewise Pope Leo, [epistle 52, otherwise 54, to Emperor Marcian]. The privileges of churches, established by the canons of the saints and fixed by the decrees of venerable Nicaea, can be overthrown by no dishonesty or altered by novelty. Likewise Pope Nicholas, presiding over a universal synod, said, [in the Council of Rome, last chapter]:

C. XVIII. Let one who has contemned observing the commands or decrees of the Roman Pontiffs be anathema.

If anyone shall have contemned dogmas, commands, prohibitions, sanctions, or decrees salutarily promulgated by the prelate of the Apostolic See for the Catholic faith or ecclesiastical discipline, for the correction of imminent or future evils, let him be anathema.

Likewise Gelasius to Cresconius and John, bishops of Mesalia, among other things:

C. XIX. Successors ought to observe the statutes of their predecessors.

Just as it is fitting for a successor to preserve the statutes of his predecessors as lawful and just, so also he ought to correct things badly done. Hence also Arcadius and Honorius:

[C. XX.]

We command, they say, that whatever was established by our forebears at diverse times concerning the sacrosanct churches remain inviolate and uncorrupted. Therefore, let nothing be altered in the privileges; let protection be extended to all who serve the churches, because in our times we desire reverence to be increased rather than anything to be altered from those things formerly granted. The same, [law 30]. § 1. By the present sanction we do not so much command anything new as confirm those things that appear to have been granted long ago. Therefore, under threat even of punishment, we prohibit mutilating the privileges that reverence for religion obtained long ago, so that those also who obey the church may enjoy its benefits. The same, [law 34]. § 2. If the privileges of the venerable church shall have been either violated by anyone's rashness or neglected through dissimulation, let the offense be punished with a condemnation of twelve pounds of gold, as was also formerly established. And let the privileges themselves nevertheless possess their fullest force in all things. Likewise Pelagius to Armentarius, master of soldiers, among other things:

C. XXI. Let it not be lawful for a pontiff to depart from the right of the church that is confirmed by the authority of documents.

After the rights of the church have also been confirmed by the authority of intervening documents, let a pontiff in no way be permitted to have free license to depart from them, even if he wishes. GRATIAN. Therefore, if the privileges of monasteries or any churches are preserved inviolate by the authority of Leo, Gregory, Gelasius, and some other pontiffs of the holy Roman Church; if things done contrary to the laws are to be regarded as not done; if a pontiff does not have free license to depart from documents by which the rights of a church are confirmed: it is evident that later privileges cannot derogate from earlier ones, nor by their authority will any exception be raised against them, since even if they were issued specially against them, they would be regarded as not done. PART II. § 1. To these things answer is made thus: by her authority the holy Roman Church has power to separate things joined and to join things separated, provided the equity of reason is considered. Hence, in view either of piety or of necessity, she has power to alter either wholly or in part things once granted by her. For because of the necessity of correcting vices, the privileges of many churches are either diminished or wholly altered, whether personally or generally. § 2. Personally, according to this: "One who abuses the power permitted to him altogether merits losing his privilege."

C. XXII. Let one who usurps what he did not receive lose what he has.

Likewise Pope Silverius to Bishop Vigilius, [epistle 2]. Thus it is fitting that the faith of the holy Fathers be preserved in the Catholic Church: one who with reprehensible rashness has assumed what he did not receive should lose what he possessed.

C. XXIII. One who does not lawfully use his power loses his privilege.

Likewise Simplicius, [epistle 2], to John, bishop of Ravenna, shortly after those things by which he prohibited him from an unlawful ordination. But we declare that if after this you shall presume anything of this kind and perhaps believe you can make anyone a bishop, presbyter, or deacon against his will, know that the ordinations of the church of Ravenna or Emilia are to be taken away from you.

C. XXIV. Those who consecrate an unworthy person lose the right of ordaining.

Likewise Pope Leo, [epistle 85, otherwise 87, to the African bishops]. If any bishops shall have consecrated as priest a person of a sort that it is not lawful for him to be, even if they in some way escape loss of their own honor, they will thereafter not possess the right of ordination, nor will they ever take part in that sacrament which, with divine judgment neglected, they bestowed upon an unworthy person. GRATIAN. Generally, as when the episcopal dignity is perpetually withdrawn from a city that was accustomed to kill its bishops. Hence Pope Gelasius writes:

C. XXV. The episcopal dignity is withdrawn from a city that kills its prelates.

Thus the repeated slaughter of the pontiffs of Sila confounded us by the atrocity of its horrifying crime, so that the determination of our deliberation hesitated for a long time, since we both detested imposing a bishop upon examples of parricide and judged that a church, however destitute, ought not to be left so entirely abandoned. Wherefore, now avoiding as it were a sacrilegious use and custom, we have judged that provision should be made for religion to the extent that, in the manner of a parish, it be governed by priests placed outside it, since it has learned to kill with the sword the pastors dwelling there; and that by an unheard-of crime—for it is nowhere at all read that this has happened even in those provinces afflicted by continual and diverse incursions of wars—a city should be found that, without a persecutor, strikes down the prelates ministering the Christian faith to it. Care must therefore be taken that its deadly destruction be healed by the cessation of its own bishops, and that the occasion of so great a fury at least be removed in this way: if no settled person against whom this cruelty can be perpetrated is present there. In this manner either that city, when it has no one against whom it may rage, may desist from rashness of this kind, or it may not offer to others the dire contagion of imitation. Therefore, let the city that cruelly stains with shed blood the sacred dignity placed within its bosom be in need of episcopal assistance supplied to it from elsewhere; in either case it is to be punished by this vengeance, whether it commits this when incited by domestic impulse or by external furies. Therefore, let Your Affection furnish the ministry of visitation to the church placed in this condition, and, either assembling together or by turns, as the quality and cause of the matters shall demand, present the divine mysteries to the ungrateful, lest, while we avoid the tares, we appear to pass by the Lord's wheat. PART III. GRATIAN. Through the necessity of hostility or poverty, episcopal sees are also either transferred or two are combined into one, just as above, in the title concerning changes of bishops, blessed Gregory is read to have done. Therefore, the privileges of churches are not judged to remain inviolate in such a way that, when certain causes intervene, they cannot be derogated from by apostolic authority; otherwise the multitude of churches would be reduced to few, since innumerable churches are frequently found to have been founded within the dioceses of others. Therefore, let the privileges of churches be preserved unshaken at all times, so that, without the authority of the one by whom they were given, it may be lawful for no one to act against them. § 1. But that saying of Pope Symmachus is objected: "The possessions that each person has left to a church at his discretion, etc.," which is written above under the title concerning alienation of ecclesiastical things. Hence it is given to be understood that those things conferred from the right of each church, whether in view of necessity, as upon travelers, or in view of piety, as upon religious houses, are to be possessed by those upon whom they are conferred not perpetually but temporally. Although that saying of Symmachus can be referred to

regard for necessity, not to consideration of piety—namely, so that the things necessity counseled should be bestowed upon travelers or captives, but not those things granted to religious houses for the peace of religious life, are prohibited from being possessed perpetually. Or rather it is to be understood of both: namely, that just as those suffering necessity are compelled, when the necessity ceases, to renounce the benefits that the consideration of mercy granted them, so those living religiously, when they cease from religion, are divested of the privileges that religious life merited. Therefore, the privileges granted to religious houses are either to be understood in the case in which provision is made for them in such a way that nothing is derogated from anyone—namely, that by the authority of privileges they are not compelled to pay tithes to anyone from newly cultivated lands whose tithes had been assigned to no one—or, if on account of the pressing necessity of the time provision cannot be made for them unless derogation is made from others, the authority of the privileges appears to be preserved in such a way that their poverty is relieved, not so that, by the increase of their riches and the no small extension of their possessions, baptismal or parochial churches are utterly destroyed.

Causa XXVI

GRATIAN. A certain priest is convicted before the bishop of being a practitioner of sortilege and a diviner. Corrected by the bishop, he was unwilling to desist; he is excommunicated. At length, acting at the point of death, he is reconciled by a certain priest without the bishop having been consulted; penance is enjoined upon him according to the quantity of time established by the canons. (Question I.) First it is asked: who are practitioners of sortilege? (Question II.) Second, whether it is a sin to be a practitioner of sortilege? (Question III.) Third, from whom did the kind of divination take its beginning? (Question IV.) Fourth, how many kinds of divination are there? (Question V.) Fifth, are practitioners of sortilege or diviners to be excommunicated if they are unwilling to desist? (Question VI.) Sixth, can one excommunicated by a bishop be reconciled by a presbyter without the bishop having been consulted? (Question VII.) Seventh, is penance according to a quantity of time to be enjoined upon the dying?

Question I

GRATIAN. Isidore defines who practitioners of sortilege are in Book VIII of the *Etymologies*, [c. 9], saying thus:

SOLE CHAPTER. Who are practitioners of sortilege?

Practitioners of sortilege are those who, under the name of a feigned religion, profess knowledge of divination through certain lots that they call lots of the saints or Apostles, or promise future things by inspection of any writings.

Question II

GRATIAN. PART I. That seeking lots is not a sin is proved by examples and authorities. For when Achan had secretly stolen from the anathema and, on account of his sin, the people, having been cut down at Ai, had turned their backs upon the enemy, the Lord commanded Joshua to seek by lots

through whose sin the people had merited to fall into the hands of the enemy. Joshua, receiving the command, cast lots first over the tribes, then over the families, and finally over the persons; and the lot thus fell upon Achan. Saul also, when fighting against the Philistines, had sworn that he would kill whoever among the people ate before sunset; by lot he discovered that his son Jonathan had eaten honey, which he had taken with his staff. When he wished to hand him over to death, he revoked the sentence at the people's supplication. Jonah also, when he fled from the Lord's face, was discovered by the sailors through lot, cast into the sea, and swallowed by a whale. It is also read of Zechariah that his lot came forth that he should offer incense. Matthias likewise is chosen by lot for the apostolate and as successor to Judas by blessed Peter. Therefore, what is proved by so many examples is manifestly not evil. Hence Augustine too says in the book of Psalms, [on Psalm 30, discourse 2, at the verse *In Your Hands Are My Lots*]:

C. I. What a lot is.

A lot is not something evil, but a thing indicating the divine will amid human uncertainty. PART II. GRATIAN. To these things answer is made thus: before the Gospel shone forth, many things were permitted that in the time of a more perfect discipline were wholly eliminated. For the union of priests or of consanguineous persons is prohibited by neither legal, evangelical, nor apostolic authority, yet it is wholly forbidden by ecclesiastical law. Thus also it is shown that there is nothing evil in lots, yet they are prohibited to the faithful lest under this appearance of divination they return to the ancient worship of idolatry. Hence the Apostle says to certain persons observing constellations and signs of future things: "You observe days, and months, and times, and years. Hence I fear lest perhaps I have labored among you without cause." Thus also astronomy and astrology fell into disuse among Catholics because, while through their own curiosity they were too intent upon them, they had less leisure for those things adapted to the salvation of souls.

That one ought not to trust in lots is attested by Jerome, writing upon Jonah, [c. 1]:

C. II. One ought not to trust in lots from the example of Jonah or Matthias.

We ought not immediately to trust in lots under the example of Jonah, or join to this testimony that passage from the Acts of the Apostles where Matthias is chosen for the apostolate by lot.

C. III. Divine oracles are not to be turned to secular affairs.

Augustine in reply to the inquiries of Januarius, [epistle 119]. As for those who read lots from pages of the Gospels, although it is to be wished that they do this rather than run to consult demons, nevertheless this custom displeases me: wishing to turn divine oracles to secular affairs and the vanity of this life.

C. IV. Lots are not to be trusted indiscriminately from the example of Matthias or Jonah.

Likewise Bede upon the Acts of the Apostles, [on c. 1]. Lots are not to be trusted indiscriminately from the example of Matthias, or because the prophet Jonah was discovered by lot, since the privileges of individuals, as Jerome says, altogether cannot make a common law. § 1. Yet if any persons, compelled by some necessity, think that God is to be consulted by lots after the example of

the Apostles, let them see that the Apostles themselves did this only after the assembly of the brethren had been gathered and prayers poured forth to God. But concerning diviners Augustine writes thus, [Book V upon Deuteronomy, c. 19]:

C. V. The things commanded by diviners are not to be observed, although the things foretold by them occur.

The Lord wished it to be understood that even those things said by diviners not according to God, if the things said occur, are not to be received in such a way that the things commanded by them are done or the things worshiped by them are worshiped.

C. VI. Which institutions of human beings are superstitious and which are not.

The same in Book [II] of *On Christian Doctrine*, [cc. 19, 20, and 21]. That which is according to the institutions of human beings is partly superstitious and partly not superstitious. Superstitious is whatever has been instituted by human beings pertaining to making and worshiping idols, or to worshiping as God either a creature or any part of a creature, or to consultations and certain compacts of signs agreed upon and covenanted with demons, such as are the enterprises of the magical arts, which poets are accustomed to commemorate rather than teach. Of this kind, though with a seemingly more permissible vanity, are the books of haruspices and augurs. § 1. To this kind also belong all amulets and remedies that even the discipline of physicians condemns, whether in incantations, in certain marks that they call characters, or in any things to be suspended and bound or even in some manner made to dance, not for the balancing of bodies but for certain signs, whether hidden or manifest. They call these by the more eminent name "physic," so that they may appear not to entangle one in superstition but to benefit nature. Such are earrings at the top of each ear, little rings made from the bones of ostriches on the fingers, or when a person with hiccups is told to hold his thumb with his right hand. To these are joined a thousand most empty observances: if some member has twitched; if, while friends walk together, a stone or a boy intervenes between them. § 2. From this kind also are these things: to tread upon the threshold when passing before one's house; to return to bed if someone sneezes while putting on his shoes; to return home if, while proceeding, he stumbles; or if a garment is gnawed by mice. § 3. Nor are those formerly called genethliacs because of their observations of natal days, but now called mathematicians, to be separated from this kind of pernicious superstition. For even though they obtain and sometimes ascertain the true position of the stars when each person is born, nevertheless they err exceedingly in what they attempt to derive from it, whether our actions or the outcomes of actions. § 4. Divine authority did not salutarily remain silent about this kind of fornication of the soul, nor did it deter the soul from it merely by saying that such things are not to be followed because falsehoods are spoken by their professors, but it says: "Even if they shall have spoken to you and it shall so happen, do not believe them." For because the image of the dead Samuel pronounced true things to Saul, sacrileges of the sort by which that image was presented are not therefore less execrable; nor because in the Acts of the Apostles a ventriloquist woman offered true testimony to the Lord's Apostles did the Apostle Paul therefore spare that spirit, but rather he cleansed the woman by correcting and expelling that demon. § 5. Therefore, all arts of this kind, whether of trifling or harmful superstition, established from a certain pestiferous fellowship of human beings and demons as though compacts of a faithless and deceitful friendship, are wholly to be repudiated and shunned by a Christian.

C. VII. An inquiry or cure sought from diviners or magicians is not life but death.

The same in the book *On the City of God*. One who wishes to possess salvation without the Savior and thinks that he can become prudent without true wisdom will labor as one not healthy but sick, not prudent but foolish, in continual sickness, and will remain foolish and demented in harmful blindness. Consequently, every inquiry and every cure sought from diviners and magicians, or from the demons themselves in the worship of idols, is to be called death rather than life; and those who follow them, if they do not correct themselves, tend toward eternal perdition, as the Psalmist says: "All the gods of the nations are demons." Through deceived human beings they daily desire to deceive others, so that they may make them participants in their perdition. Thus this vanity of the magical arts, from the tradition of evil angels, prevailed throughout the whole world for very many ages through a certain knowledge of future and infernal things; and through their inventions were invented haruspicy, auguries, those things called oracles, and necromancy.

C. VIII. Christian and true piety expels and condemns astrologers.

The same in Book IV of the *Confessions*, [c. 3]. They plainly did not cease to consult those astrologers whom they call mathematicians, because supposedly no sacrifice was offered by them and no prayers were directed to any spirit for divination. Christian and true piety nevertheless consistently expels and condemns this.

C. IX. To observe auguries and inquire into the courses of the stars is the worship of idolatry.

Likewise Jerome. But add this also: because one who fornicates sins against his own body—not only this body that has been made a temple, but also that which is spoken of because the whole church is the body of Christ. And one who has stained his own body appears to sin against the whole church, because through one member a stain is diffused throughout the whole body. § 1. There is also that reproach of Egypt which, if you neglect it, is suggested by the brand of ancient custom even after the crossing of the Jordan and after the second circumcision of baptism: to observe auguries, inquire into the courses of the stars, scrutinize from them the outcomes of future things, and become entangled in other superstitions of this kind. For Egypt is the mother of idolatry, from which it is certain that reproaches of this kind sprout. If after crossing the Jordan you take them up and bind yourself again with these snares, without doubt you draw the reproaches of Egypt with you. PART III. GRATIAN. But these sacrileges are not to be detested to such an extent that, if something from a threshing floor or winepress has been sacrificed to demons, what remains is therefore believed to be unclean, or that, if it should happen that we unknowingly consume the very thing that had been offered, we therefore believe that we have sinned. Hence Augustine to Publicola, [epistle 154]:

C. X. The remaining things are not unclean because something is taken from a threshing floor or winepress for sacrifices to demons.

If something is taken from a threshing floor or winepress for sacrifices to demons with a Christian's knowledge, he sins because he permits it to be done where he has the power to prohibit it. But if he learns that it has been done, or did not possess the power to prohibit it, he uses the clean remainder of the fruits from which those things were taken.

C. XI. One who buys what he does not know was sacrificed to idols is free from guilt.

Likewise Ambrose in the first epistle to the Corinthians, [on c. 10]. Although something is polluted accidentally—that is, by an offering to an idol—nevertheless, when one who buys it does not know, he suffers no scruple and is guiltless before God.

Questions III and IV

GRATIAN. PART I. Augustine explains in the book *On the Nature of Demons* from whom the kind of divination took its beginning and how many kinds of it there are, saying thus:

C. I. Concerning the manifold kind of divination.

Therefore, the kind of divination is said to have been brought from the Persians. § 1. But Varro said that there are four kinds of divination—earth, water, air, and fire—and from these they think geomancy, hydromancy, aeromancy, and pyromancy are named. § 2. Diviners are so called as though full of God. For they pretend that they are full of divinity, and by a certain fraudulent cunning they conjecture future things for human beings. But there are two kinds of divination: art and frenzy. Incantators are those who accomplish the art by words. § 3. *Arioli* are so called because around the altars of idols they send forth impious prayers and offer deadly sacrifices, and through these solemnities of demons they receive responses. § 4. Haruspices are named as though inspectors of hours; for they observe days and hours in undertaking affairs and works, and attend to what a person ought to observe at each time. They also inspect the entrails of animals and predict future things from them. § 5. Augurs are those who attend to the flights and calls of birds and report other signs of things or unforeseen observations that occur to human beings. They are the same as auspices, for auspices are the things that those making a journey observe. Auspices and auguries are so called as though "bird-bearing," because birds bear them. There are two kinds of auspices: one pertains to the eyes, the other to the ears—flight pertains to the eyes, and the call of birds to the ears. § 6. Pythonesses are named from Pythian Apollo, because he was the founder of divining. Astrologers are so called because they augur from the stars. Genethliacs are named because of observations of natal days. For they describe the births of human beings through the twelve signs of heaven and attempt to predict the characters, deeds, and outcomes of those being born from the courses of the stars—that is, they interpret under what sign each person was born or what outcome of life one who is born will have. These are those commonly called mathematicians; the Latins call this kind of superstition constellations—that is, notations of the stars, how they stand when each person is born. § 7. At first those same interpreters of the stars were called Magi, as is read of those who announced in the Gospel that Christ was born. Afterward only mathematicians were called by this name. Knowledge of this art was permitted until Christ, so that after Christ was brought forth no one should thereafter interpret anyone's nativity from heaven. Horoscopists are so called because they inspect the hours of human births with a dissimilar and diverse fate. Practitioners of sortilege are those who, under the name, etc. As above. § 8. Twitch-diviners are so called because, when any parts of their members twitch, they proclaim that something prosperous or sad is signified to them from it. PART III. GRATIAN. But it is asked concerning the nature of demons: of what nature are they, whether they are able to know future things beforehand, or in how many ways do they know future things

beforehand? Augustine writes thus concerning these things in the same book, [*On the Divination of Demons*, c. 3]:

C. II. In how many ways demons know future things beforehand.

It must be known that the nature of demons is such that through the perception of an aerial body they easily surpass the perception of earthly bodies; and in speed also, because of the superior mobility of an aerial body, they incomparably surpass not only the courses of any human beings or beasts but even the flights of birds. Endowed with these two things insofar as the aerial body is concerned—that is, keenness of perception and speed of movement—they announce things planned long before, or report things at which human beings marvel because of the slowness of earthly perception. There has also accrued to demons, through the very long time over which their life extends, an experience of things far greater than can come to human beings because of the brevity of life. Through these capacities that the nature of an aerial body has obtained, demons not only predict many future things but also do many things; and because human beings cannot say or do these things, some think them worthy to be served and to receive divine honors, especially through the instigation of the vice of curiosity, because of love of false and earthly felicity and temporal excellence. [c. 5.] § 1. Now therefore, since the question concerns the divination of demons, first it must be known that they very often foretell those things that they themselves will do. For they frequently receive the power both to inflict diseases and, by corrupting the air itself, to render it diseased, and to persuade evil deeds upon perverse persons and lovers of earthly advantages; concerning their characters they are certain that they will consent to those who persuade such things. They persuade in marvelous and invisible ways, penetrating by that subtlety the bodies of human beings who do not perceive them and mingling themselves with their thoughts through certain imaginary visions, whether they are awake or asleep. § 2. Sometimes, however, they foretell not things that they themselves do, but things that they know beforehand will occur from natural signs—signs that cannot enter into human perception. For because a physician foresees what one ignorant of this art does not know how to foresee, he is not therefore to be regarded as a diviner. And what wonder is it if, just as the physician, from the disturbed or failing temperament of a human body, foresees good health or future illnesses, so demons, from a condition of the air known to themselves but unknown to us, foresee future storms? Sometimes also they learn with total ease the dispositions of human beings—not only those uttered by voice but even those conceived in thought—when certain signs are expressed in the body from the mind; and from this they also foretell many future things that are indeed marvelous to others who did not know that these things had been planned. [c. 6.] § 3. They also deceive through zeal for deceiving and through an envious will by which they rejoice in the error of human beings. But lest they lose the weight of authority among their worshipers, they arrange that blame be attributed to their interpreters and to the conjecturers of their signs when they themselves have been deceived or have lied. § 4. Sometimes, however, the malignant spirits themselves, mockers of human beings and enemies of their salvation, are accustomed to predict the failure of their own worship and the ruin of idols so that they may appear to know beforehand what is to come in individual kingdoms or places and what adversity can befall their own faction. Even those who read the histories of the gentiles are not ignorant of this. What wonder is it, therefore, if, when the overthrow of temples and images was already imminent—which the prophets of the supreme God predicted so long beforehand—the demon Serapis disclosed this shortly

beforehand to one of his worshipers, so that in departing or fleeing he might commend his supposed divination? PART. GRATIAN. That the devil detects the dispositions of human beings conceived in thought through exterior signs does not appear to be approved by the firmest reasoning. Hence the same Augustine says in Book II of the *Retractions*, [c. 30]:

C. III. That the devil comprehends the internal thoughts of the soul from bodily movements is a most hidden matter.

In a certain place I said that demons sometimes learn with total ease the dispositions of human beings—not only those uttered by voice but even those conceived in thought—when certain signs are expressed in the body from the mind. I stated a most hidden matter with a bolder assertion than I ought to have done. For it has been learned, even through certain experiments, that these things come to the knowledge of demons. But whether certain signs are given from the body of those thinking, perceptible to them but hidden from us, or whether they know these things by some other spiritual power, can either be discovered by human beings only with the greatest difficulty or cannot be discovered at all.

Question V

GRATIAN. That practitioners of sortilege and diviners, if they are unwilling to desist, are to be excommunicated is proved by reason and authority. For it is a certain kind of worship of idols to predict future things from consultations with demons. For just as the avaricious person, because he expends upon money the worship owed to God, is called a worshiper of idols by the Apostle, so those who labor to discover future things—which are sometimes found to have been revealed from an oracle of God—either by consultation with demons or by any deceptions attribute the rights of divinity to creatures. For to know future things beforehand belongs to God alone, who in contemplation of himself causes even the angels to know them beforehand. Hence Isaiah says: "Announce to me the former and the last things, and I will say that you are gods." § 1. But worshipers of idols are to be separated from the communion of the faithful. Hence the Apostle says in the epistle to the Corinthians: "If anyone is named a brother and is a fornicator, or avaricious, or serving idols, with such a person do not even take food." Hence it is also read in the decree of Gregory the Younger, [presiding in the Roman Council, c. 12]:

C. I. Let one who observes altar-diviners or incantators be anathema.

If anyone shall have observed altar-diviners, haruspices, or incantators, or used phylacteries, let him be anathema.

C. II. Let those who seek divinations do penance for five years.

Likewise from the Council of Ancyra, c. 23, [otherwise 24]. Those who seek divinations and follow the custom of the gentiles, or introduce persons of this kind into their houses for the purpose of seeking something by magical art or of expiation, shall lie under a rule of five years according to the defined grades of penance.

C. III. It is not lawful for Christians to worship the elements or observe the courses of the moon and stars in their works.

Likewise from the Council of Pope Martin, [that is, from the Capitula of Martin of Braga, c. 72]. Let it not be lawful for Christians to maintain the traditions of the gentiles and to observe or worship the elements, or the courses of the moon or stars, or the empty deceit of signs for building a house, planting crops or trees, or joining marriages. For it is written: "Everything you do, whether in word or deed, do all things in the name of our Lord Jesus Christ, giving thanks to God." § 1. Nor in the gathering of medicinal herbs is it lawful to attend to any observations or incantations, except only with the divine Creed or the Lord's Prayer, so that God alone, Creator of all things and Lord, may be honored. § 2. But if anyone, following the custom of pagans, shall introduce diviners and practitioners of sortilege into his house, as though they might cast out evil, discover acts of sorcery, or perform pagan purifications, let him do penance for five years. § 3. Nor is it lawful for Christian women to observe vanity in their wool-working; rather, let them invoke as helper God, who gave them the wisdom of weaving.

C. IV. Those dedicated to sacred offices must not become magicians or incantators.

Likewise from the Council of Laodicea, c. 30. Those dedicated to sacred offices or clerics ought not to be magicians or incantators, or to make phylacteries, which are proved to be bonds of their souls. We have ordered those who use such things to be cast out of the church.

C. V. Let a bishop or presbyter who consults magicians or haruspices be deprived of honor.

Likewise from the Fourth Council of Toledo, c. 30. If any bishop, presbyter, deacon, or anyone from the orders of clerics shall have been discovered to have consulted haruspices, incantators, altar-diviners, augurs, practitioners of sortilege, those who profess the magical art, or any persons practicing things similar to theirs, let him, suspended from the honor of his dignity, undertake the discipline of a monastery and there, dedicated to perpetual penance, discharge the admitted crime of sacrilege.

C. VI. Concerning those who devote themselves to auguries and divinations.

Likewise from the Council of Agde, c. 38. Some clerics or laypersons devote themselves to auguries and, under the name of a feigned religion, profess knowledge of divination through those things they call the lots of the holy Fathers, or promise future things through inspection of any writings. Any cleric or layperson who shall have been discovered either to consult or to teach this is to be regarded as a stranger from the church.

C. VII. A lot is decreed to be nothing other than divination and sorcery.

Likewise Leo IV to the bishops of Britain, [c. 4]. We decree that the lots by which you decide all things in your judgments—which the Fathers condemned—are nothing other than divinations and acts of sorcery. Wherefore, we wish them to be condemned altogether, and we do not wish them to be named any longer among Christians; and we prohibit them from being practiced by the prohibition of anathema.

C. VIII. Incantators and practitioners of sortilege are to be pursued as enemies of Christ.

Likewise Gregory to Hadrian the notary, [Book IX, epistle 47]. It has come to us that you pursued certain incantators and practitioners of sortilege; know that your solicitude and zeal have been altogether pleasing to us. Therefore, let it belong to your diligence to seek them carefully and to correct with strict punishment any enemies of Christ of this kind whom you shall find.

C. IX. Let a cleric, monk, or layperson who has followed divinations, auguries, or lots be excommunicated.

Likewise from the Council of Orléans, [I, c. 32]. If any cleric, monk, or secular person shall have believed that divination, auguries, or the lots that they falsely claim belong to the saints ought to be observed, or shall have thought that they should be disclosed to any persons, let them be expelled from the communion of the church together with those who shall have believed them.

C. X. Let pastoral vigilance watch against practitioners of sortilege and worshipers of idols.

Likewise Gregory, [Book VII, epistle 66, to Bishop Januarius]. We exhort Your Fraternity to watch more vigorously with pastoral vigilance against worshipers of idols, haruspices, and practitioners of sortilege. If you find that they are unwilling to amend themselves from such things, if they are slaves, we wish them to be chastised with lashes; but if they are free, they are to be directed to punishment worthy of confinement and strictness.

C. XI. Let one devoted to auguries and incantations be separated from the church.

Likewise from the Council of Carthage, [IV], c. 39. We command that one devoted to auguries or incantations, and likewise one adhering to Jewish superstitions or festivals, be separated from the assembly of the church.

C. XII. Let bishops endeavor in every way to eliminate the art of sortilege and magic.

Likewise from the Council of Ancyra, c. 1. Let bishops and their ministers labor with all their strength to eradicate wholly from their parishes the pernicious art of sortilege and magic invented by the devil; and if they find any man or woman a follower of a crime of this kind, let them cast that person, shamefully dishonored, from their parishes. For the Apostle says: "Avoid a heretical person after the first and second correction, knowing that one who is of this kind is subverted." Those who, having abandoned their Creator, seek the devil's assistance are subverted and held captive by the devil; and therefore the holy church ought to be cleansed from such a pestilence. § 1. Nor is this to be omitted: certain criminal women, turned backward after Satan and seduced by the illusions and phantasms of demons, believe and profess that during the nocturnal hours they ride upon certain beasts with Diana, goddess of the pagans, or with Herodias and an innumerable multitude of women; that they traverse great spaces of lands in the silence of the dead of night; that they obey her commands as those of a mistress; and that on certain nights they are summoned to her service. But would that these women alone had perished in their unbelief and had not drawn many with them into the destruction of infidelity. For an innumerable multitude, deceived by this false opinion,

believe these things to be true; and by believing, they deviate from the right faith and are enveloped in the error of the pagans when they suppose that there is anything of divinity or divine power outside the one God. Wherefore, throughout the churches committed to them, priests ought with every urgency to preach to the people of God so that they may know that these things are altogether false, and that phantasms of this kind are imposed upon the minds of the faithful not by the divine but by a malignant spirit. § 2. Indeed, Satan himself, who transforms himself into an angel of light, when he has captured the mind of any woman and subjugated it to himself through unbelief, immediately transforms himself into the forms and likenesses of diverse persons; and, deluding in dreams the mind he holds captive, showing now joyful things, now sad things, now known persons, now unknown, leads it through every byway. And although the spirit alone suffers this, the unbelieving woman supposes that this happens not in the mind but in the body. For who in dreams and nocturnal visions is not led outside himself and sees many things while sleeping that he had never seen while waking? But who is so foolish and dull that he thinks all these things, which occur in the spirit alone, also happen in the body, since the prophet Ezekiel saw and heard the visions of the Lord in the spirit, not in the body, as he himself says: "Immediately," he says, "I was in the spirit"? And Paul does not dare to say that he was caught up in the body. Therefore, it is to be announced publicly to all that one who believes such and similar things loses the faith; and one who does not possess the right faith is not Christ's but belongs to him in whom he believes, that is, the devil. For of our Lord it is written: "All things were made through him." Therefore, whoever believes that any creature can be changed either for the better or for the worse, or transformed into another form or another likeness, except by the Creator himself, who made all things and through whom all things were made, is without doubt an unbeliever and worse than a pagan. PART II. GRATIAN. Some persons are found who, moved by inward envy to the destruction of their enemies, strip the altar of sacred vestments, clothe it in mournful vesture, withdraw the customary service of lights from the churches of God, or celebrate for living persons the Mass promulgated for the pious repose of the dead. The Council of Toledo [XIII] condemns the most wicked acts of sorcery of all such persons, saying, [c. 7]:

C. XIII. Let a priest who has devoted his effort to an act of sorcery of this kind be cast out.

Whichever of the priests or ministers, moved henceforth by the cause of any grievance, shall have presumed either to strip an altar of sacred vestments, clothe it in any other mournful vesture, withdraw the customary service of lights from the temple of God, or order them to be extinguished, unless the satisfaction of true penitence before the metropolitan has previously purged him, let him know that he is to be deprived of the dignity and honor of his place. Without doubt, there are excluded from this sentence of punishments those persons who happen to have done this either fearing the contamination of sacred orders or the subversion of the holy faith, enduring hostility or siege, or also fearing the sentence of divine judgments; in their deed humility by which God is placated is declared more than the deceitfulness of inward envy. § 1. Many priests also, wounded by the deceit of enmity, strive with a deceitful vow to celebrate for living persons the Mass promulgated for the repose of the dead, so that the one for whom they offer that sacrifice may incur the danger of death. Therefore, the assembly of our unanimity has chosen that, if anyone shall henceforth be discovered to have perpetrated such things, he is to be deposed from the grade of his own order; and both that priest himself and the person who is judged to have incited him to perform such things are

to be bound in the prison of perpetual exile. PART III. GRATIAN. From the foregoing authorities it is gathered that altar-diviners, haruspices, incantators, practitioners of sortilege, and other followers of this kind are to be eliminated from the church and, unless they return to wisdom, perpetually excommunicated. § 1. But what is said in the last chapter from Ancyra—that the things done through incantators occur not in the body but in the spirit—Augustine appears to assert in the book *On the City of God*, saying thus:

C. XIV. Things done by the deceptions of magicians are proved to be not real but phantasmal.

Nor is it wonderful concerning the deceptions of magicians, whose arts of sorcery have advanced so far that they even resisted Moses in those signs, turning rods into dragons and water into blood, since it is also reported in the books of the gentiles that a certain sorceress, Circe, changed the companions of Ulysses into beasts. It is also read concerning a sacrifice that the Arcadians offered to their god Lycaeus, from which whoever ate was converted into the forms of beasts. But all these things were fashioned by magical deceptions rather than accomplished in the truth of things. Therefore, so that the errors themselves may be made manifest to the ignorant, we judge it fitting first to speak concerning their proper character and inventors according to the tradition of the forebears. § 1. Magicians are those who are commonly called evildoers because of the magnitude of their crimes. They are those who, by God's permission, shake the elements, disturb the minds of persons who trust less in God, and kill by the force of an incantation alone without any drinking of poison. Hence Lucan also says: "A mind polluted by no corruption from drunk poison perishes through incantation." For after summoning demons, they dare to agitate them so that by evil arts they may kill any of their enemies. They also use blood and often touch the bodies of the dead with victims. § 2. Necromancers are those through whose invocations the dead appear to be raised, to divine, and to respond to questions. For *nigro* in Greek means "dead," and *mantia* is called "divination"; to raise them blood is applied to a corpse. For demons are said to love blood, and therefore, whenever necromancy is performed, gore is mixed with water, and they are more easily summoned by the color of blood. § 3. Hydromancers are named from water. For hydromancy is to summon the shadows of demons in an inspection of waters, to see the images of their mockeries, and there to hear certain things from them; there, when blood is applied, they are also said to raise those in the lower regions. And below: § 4. To all the aforesaid things belong the amulets of execrable remedies that the physicians' art does not commend, whether in invocations or in characters to be suspended and bound. In all of these is the art of demons, sprung from a certain pestiferous fellowship of human beings and evil angels. Hence all are to be avoided by a Christian and altogether and wholly repudiated and condemned with execration. § 5. Auguries, however, concern birds. The Phrygians first invented these. § 6. Mercury is said to have first invented deception. Deception is so called because it dazzles the keen sight of the eyes. § 7. A certain Tages is said to have first handed down the art of haruspicy to the Etruscans. Lifeless, he dictated haruspicy and afterward did not appear. For it is said fabulously that, while a certain rustic was plowing, he suddenly leapt from the clods and dictated haruspicy, on which day he died. The Romans changed those books from the Etruscan language into their own. § 8. Therefore, by these portents human curiosity is mocked through the deceit of demons when persons shamelessly desire to know that which by no reason does it belong to them to investigate. This power is therefore given to unclean spirits so that they may fit the perverse to themselves—that is, evil persons—and seduce those who scorn the truth and

believe a lie and, according to Paul's sentence, will not endure sound doctrine but, with itching ears, will heap up teachers for themselves according to their desires; they will turn their hearing away from the truth and be turned to fables; burdened with sins, they will be led by various desires, always learning and never arriving at knowledge of the truth. But just as Jannes and Mambres resisted Moses, so these persons resist the truth, being corrupted in mind and reprobate concerning the faith; but they will advance no further, for their folly will be manifest to all, just as that of the former persons was. § 9. Nor ought anyone therefore to believe that any persons are able to do anything by magical arts without God's permission—who either does all things that occur by his just judgment or permits them thus to occur by his permission—because the aforesaid magicians are read to have done things similar to Moses. He cast down his rod, and it was turned into a dragon; and they each cast down their rods, which were turned into dragons, but Aaron's rod devoured their rods. For neither the magicians nor the evil angels, by whose ministry those things were worked, were creators of dragons. For throughout all the elements there are present in bodily things certain hidden seminal principles; when a temporal and causal opportunity has been given to them, they burst forth into the forms due to them according to their modes and ends. And thus the angels who do these things are not called creators of animals, just as farmers are not to be called creators of crops or of any things generated on earth, although they know how to furnish certain visible opportunities and causes so that those things may be born. What these persons do visibly, those others do invisibly. But God alone is the one Creator, who inserted the causes themselves and the seminal principles into things. § 10. Moreover, some think it is to be asked how Scripture relates that the Pythoness raised the prophet Samuel for a conversation with Saul, the most impious king, if Pythian divination is to be assigned to the error of magical art. To these it can be answered thus: it is an altogether unworthy act if assent is accommodated according to the words of the history. For how could it happen that a man holy from birth and just by the works of his life was drawn forth by magical art? But if he was not drawn and consented, this too is contrary to belief concerning a just man. For justice has no assistance if, whether dragged or willing, he lost the spiritual merit that he had sought while placed in the flesh. This is exceedingly absurd, because one who departs from here just remains just. Rather, this is a deception of Satan, by which, in order to deceive very many, he feigns that even the good are in his power. The Apostle shows this among other things, saying: "Satan himself transforms himself into an angel of light." For in order to create an error in which he might be glorified, he arrayed himself in the appearance and name of a just man, so that he might falsely declare that the hope they preached to the worshipers of God availed nothing, when he feigned that the just departing from here were in his power. But this deceives some persons: that he did not lie concerning the death of Saul and his son, as though it were a great thing for the devil to foresee the death of the body before its occurrence, since certain signs are accustomed to appear to those about to die, especially to those from whom God's protection appears to have been removed. How much more could the devil foresee it, whom the prophetic oracles testify to have been sublime in angelic majesty, concerning whose magnitude the Apostle says: "Or are you ignorant of the depth of Satan?" What wonder is it, therefore, if he was able to foresee a death closely imminent, since this is the means by which he deceives and wishes to be worshiped as though in God's power? For Saul had been made mad by such great dullness that he fled to a Pythoness. Depraved because of sin, he betook himself to those things he had condemned. But if anyone, on account of the history, thinks that the things expressed in words are not to be passed over, lest the account of the history be empty, he indeed does rightly,

provided that he draws this in no way to the principle of truth, but to Saul's vision and understanding. For having become reprobate, he could not possess a good understanding. The historian described Saul's mind and Samuel's appearance, expressing the things said and seen while passing over whether they were true or false. For he says: "Hearing in what appearance he had been raised, he understood," it says, "that this was Samuel." It reported what he understood; and because he did not understand rightly, contrary to Scripture he worshiped another than God, and, thinking him Samuel, he worshiped the devil, so that Satan might possess the fruit of his deceit. For he strives for this: to be worshiped as God. If Samuel had truly appeared to him, the just man certainly would not have permitted himself to be worshiped, for he had preached that the Lord alone was to be worshiped. And how would the man of God, who was with Abraham in refreshment, say to a pestilential man worthy of the burning of Gehenna, "Tomorrow you will be with me"? By these two claims the improvident Satan provided for the subtlety of his deceit: he both permitted himself to be worshiped under Samuel's appearance and name contrary to the law, and falsely said that a man weighed down by sins would be with the most just Samuel, although there is a great distance between sinners and the just. Yet it can be said to be true and can appear true if Samuel's name is omitted, because Saul was to be with the devil; for he passed over to the one whom he worshiped. Therefore, the devil, always hidden beneath a veil, betrays himself when he fashions things that adhere to the persons through whom he strives to deceive. § 11. But if anyone objects and says, "How do those things occur which those diviners predict as future? Or how can they furnish healing to the sick or inflict illness upon the healthy if they have no power or capacity of their own?" let him receive this response from us: each person therefore ought not to believe them because the things they predict sometimes occur, or because they appear to heal the sick or injure the healthy, since this happens by God's permission so that those who hear or see this may be tested and it may appear of what sort their faith or devotion toward God is. Thus in Deuteronomy Moses is read to have commanded the people of God from the word of the Lord, saying: "If there arises in your midst a prophet, or one who says that he has seen a dream, and he predicts a sign and a portent, and what he has spoken occurs, and he says to you, 'Let us go and follow foreign gods whom you do not know, and let us serve them,' you shall not hear the words of the prophet or dreamer, because the Lord your God tests you, so that it may be manifest whether you love him or not. Follow the Lord your God with all your heart and all your soul, and fear him; keep his commandments and hear his voice; you shall serve him and cleave to him, etc." Here he plainly wished it to be understood that even those things said by diviners not according to God, if the things said occur, are not to be received in such a way that the things commanded by them are done or the things worshiped by them are worshiped. Nor did he show that the fact they occur is beyond his power; rather, as though it were asked why he permits them, he set forth the cause of testing: namely, for their love to be known, whether they possess it toward their God—known rather by themselves than by him, who knows all things before they occur.

Question VI

GRATIAN. That one excommunicated by a bishop cannot be reconciled by another without that bishop having been consulted—unless perhaps by his metropolitan or by the supreme Pontiff—is proved by reason and authority. For presbyters receive the power of excommunicating or reconciling from bishops, not bishops from presbyters; and therefore they can reconcile those excommunicated

by priests, but priests cannot reconcile those excommunicated by bishops. For the reconciliation of penitents is an episcopal office, not a sacerdotal one. Hence in the Second Council of Carthage, c. 3, Bishop Fortunatus said:

C. I. Let the reconciliation of penitents and the consecration of chrism and maidens not be performed by presbyters.

If Your Holiness commands, I make a suggestion. For I remember that it was established in the preceding council that chrism, the reconciliation of penitents, and also the consecration of maidens are not to be performed by presbyters. But if anyone shall emerge as doing this, what is to be established concerning him? Bishop Aurelius said: Your Dignity has heard the suggestion of our brother and fellow bishop Fortunatus; what do you say to these things? It was said by all the bishops: Let the preparation of chrism and the consecration of maidens not be performed by presbyters. Let it not be lawful for a presbyter to reconcile anyone at a public Mass. This pleases all. GRATIAN. Nevertheless, the consecration of maidens can be performed by a presbyter after the bishop has been consulted. Hence in the Third Council of Carthage, [c. 36]:

C. II. With the bishop's permission a presbyter has power to consecrate virgins.

Let a presbyter not consecrate virgins without the bishop having been consulted; but let him never prepare chrism.

C. III. It is lawful neither for a deacon to minister nor for a presbyter to bless a penitent in church.

Likewise from the Council of Agde, [cc. 43 and 44]. Let a deacon not presume to minister or a presbyter to consecrate an altar. § 1. Nor shall it be at all lawful for a presbyter to pour forth a blessing over the people in church or to bless a penitent in church.

GRATIAN. Behold, one excommunicated by a bishop cannot be reconciled through a priest. But it must be noted that one reconciliation is public and another private. Public reconciliation occurs when penitents are publicly presented before the entrance of the church and are publicly reconciled to the church through the imposition of an episcopal hand. This appears to be prohibited to priests. Hence toward the end of that chapter they are not prohibited simply from reconciling penitents, but from doing so at a public Mass. But private reconciliation occurs when penitents concerning hidden sins, or those acting at the point of death, approach the grace of reconciliation. This reconciliation can be performed through a priest. Hence Pope Evaristus says:

C. IV. At the bishop's command, let presbyters reconcile penitents concerning hidden sins.

At the bishop's command, let presbyters reconcile penitents concerning hidden sins and, as we stated above, absolve and communicate the infirm.

C. V. If the bishop is absent, let one placed in danger be reconciled through a presbyter.

Likewise from the Second Council of Carthage, [c. 4]. Bishop Aurelius said: If anyone shall have been placed in danger and shall have requested to be reconciled to the divine altars, if the bishop is absent,

the presbyter ought certainly to consult the bishop and thus reconcile the one in danger at his command. We ought to strengthen this matter by salutary counsel. It was said by all the bishops: What Your Holiness has deigned necessarily to instruct us pleases us.

C. VI. Let one reconciled through fear of death, if he recovers, complete the time of penance without communion.

Likewise from the Council of Pope Martin, [c. 82]. If anyone departing from the body seeks the final and necessary viaticum of communion, let it not be denied him. But if, placed in a desperate condition, he shall again have been made healthy after receiving communion, let him participate only in prayer and not receive the sacrament until he completes the established time of penance. Therefore, those who are at the departure of death and desire to receive the sacrament ought to receive it with the consideration and examination of the bishop.

C. VII. Let those departing from the body be reconciled without imposition of the hand.

Likewise from the Council of Orange, [c. 3]. Concerning those who depart from the body after receiving penance, it was resolved to communicate them without a reconciling imposition of the hand, because this suffices for the reconciliation of one dying according to the definitions of the Fathers, who fittingly named communion of this kind viaticum. But if they survive, let them stand in the order of penitents, so that, after necessary fruits of penance have been displayed, they may receive lawful communion with a reconciling imposition of the hand. § 1. Penance is not to be denied to clerics who desire it. § 2. Likewise, one suddenly rendered mute can, as was established, be baptized or receive penance if he has testimony of his former will through the words of others or of his present will through his own gesture. § 3. All things that belong to piety are also to be conferred upon the insane.

C. VIII. Let one about to die be reconciled by the testimony of others if he has become mute or turned to frenzy.

Likewise from the Fourth Council of Carthage, [c. 76]. If one who seeks penance in infirmity should happen, while the summoned priest comes to him, to become mute through the oppression of infirmity or to be turned to frenzy, let those who heard him give testimony; and let him receive penance and, if it is believed that he is about to die immediately, let him be reconciled through imposition of the hand, and let the Eucharist be poured into his mouth. If he survives, let him be admonished by the aforesaid witnesses that his petition was satisfied, and let him be subjected to the established laws of penance for as long as the priest who gave the penance shall approve. Likewise, [c. 78]. § 1. Let penitents who in infirmity have received the viaticum of the Eucharist not believe themselves absolved without imposition of the hand if they survive.

C. IX. Let the dying be reconciled by the bishop's care and examination.

Likewise from the Council of Nicaea, [c. 12]. Concerning those who depart from the body, the rule of the ancient law will even now be observed in such a way that, if anyone should depart from the body, he is not deprived of the necessary viaticum of his life. But if any desperate person survives after receiving communion, let him be among those who communicate in prayer alone. Nevertheless,

concerning all those who depart from the body, in giving them communion let there be the care and examination of the bishop.

C. X. Reconciliation is not to be denied to those who implore it in a time of necessity.

Likewise Bishop Leo, [to Theodore, epistle 89, otherwise 91]. To those who in a time of necessity and under the urgency of pressing danger implore the assistance of penance and immediately afterward reconciliation, neither satisfaction is to be forbidden nor reconciliation denied, because we can neither set measures nor define times for the mercy of God, before whom conversion permits no delays to intervene, as the Spirit of God says through the Prophet: "When, having been converted, you groan, then you will be saved." § 1. But if they are so weighed down by some infirmity that they cannot signify in the present what they had requested a little before, the testimony of the faithful standing around ought to benefit them. Let them obtain at the same time the benefit of both penance and reconciliation, while nevertheless the rule of the paternal canons is preserved concerning the persons of those who sinned by departing from the Lord's faith.

C. XI. Let the offering of one who hastened to penance but could not find a priest not be rejected.

Likewise from the Council of Épaone. If anyone shall have died who had already confessed and has good testimony, and could not come to a priest, but death overtook him at home or on the road, let his relatives make an offering for him at the altar and give a ransom for captives. GRATIAN. Behold, at the bishop's command penitents concerning hidden sins, or those placed in danger, can be reconciled through a presbyter. § 1. But if a sinner is pressed by the necessity of death and the bishop is so far removed that the presbyter cannot consult him, will penance be denied to the dying person? Will the benefit of reconciliation not be bestowed upon the penitent whom God receives, once converted, for pardon, according to this: "At whatever hour the sinner shall have been converted, etc.," and likewise: "Be converted to me with your whole heart, and I will be converted to you"? Will the church neglect to reconcile to herself one whom God has raised up within? Will the bishop's absence condemn one whom the grace of divine presence illuminates through the washing of regeneration? Assistance is given to the dying even by laypersons if presbyters are lacking. Why, therefore, can he not be assisted through a presbyter by the benefit of reconciliation if it should happen that the bishop is absent? If, according to Augustine, one who at the point of death confesses the shamefulness of his crime to a companion becomes worthy of pardon through desire for a priest, why is one who does not deny the stain of his guilt to a priest not similarly worthy of reconciliation through desire for the bishop? Likewise, presbyters ought not to deny penance to the dying. Hence Pope Julius says:

C. XII. A presbyter who denies penance to the dying is guilty of their souls.

If a presbyter shall have denied penance to the dying, he will be guilty of their souls, because the Lord says: "On whatever day the sinner shall have been converted to penance, he will live with life and will not die." For true confession can occur at the final time, because the Lord is an inspector not only of time but also of the heart, just as the thief by the penance of one moment merited to be in

paradise at the hour of his final confession. Likewise Pope Celestine, [in epistle 2 to the bishops of Gaul]:

C. XIII. Penance is not to be denied to the dying.

We have learned that penance is denied to the dying and that assent is not given to the desires of those who at the time of their death desire that aid be given to their soul by this remedy. I confess that we shudder that anyone of such great impiety is found that he despairs of God's kindness, as though God could not come to the aid of one running to him at any time and redeem a person endangered under the burden of sins, from which he desires and wishes to be delivered and freed. What else, I ask, is this but to add death to one dying and by one's cruelty to kill his soul, lest it be capable of being absolved? The Lord, although most ready to come to aid, invites to penance and thus promises the sinner: "At whatever hour, etc.," and likewise: "I do not desire the death of the sinner, but that he be converted and live." Therefore, whoever shall have denied penance to a person at the time of death takes salvation from him and has despaired of the mercy of God, since he did not believe that God could suffice to aid the dying even in a moment. The thief hanging upon the cross at Christ's right would have lost the reward if the penance of one hour had not assisted him. While he was in punishment, he repented; and for the profession of one declaration he merited, through Christ's promise, a dwelling in paradise. Therefore, the true conversion to God of those placed at the end is to be estimated by the mind rather than by time, as the Prophet asserts thus: "When, having been converted, you groan, then you will be saved." Therefore, since the Lord is the inspector of the heart, penance is not to be denied at any time to one requesting it, since he binds himself to that judge to whom he knows that all hidden things are revealed. GRATIAN. But one to whom penance is not denied must not be denied reconciliation either. Therefore, a presbyter ought not to reconcile a penitent without the bishop having been consulted, unless final necessity compels him.

Hence it is read in the Third Council of Carthage, [c. 32]:

C. XIV. Let a presbyter not reconcile a penitent without the bishop having been consulted, unless final necessity compels it.

Let a presbyter not reconcile a penitent without the bishop having been consulted, unless final necessity compels it while the bishop is absent. For any penitent whose crime is public and exceedingly notorious, and has disturbed the whole city, let a hand be imposed upon him before the apse of the church.

Question VII

GRATIAN. PART I. Concerning the time of satisfaction—whether it is to be imposed upon the dying—Theodore, archbishop of Canterbury, defines thus in his Penitential:

C. I. A quantity of penance is not to be imposed upon those placed in danger, but made known to them.

A pure confession of sins is to be sought from the infirm placed in danger of death; nevertheless, a quantity of penance is not to be imposed upon them, but is to be made known, and the burden of penance is to be relieved by the prayers of friends and endeavors of almsgiving if perhaps they should depart, lest, being bound, they become strangers to both communion and participation in pardon. If,

divinely rescued from that danger, he recovers, let him diligently observe the measure of penance imposed upon him by the priest. Therefore, according to canonical authority, lest the door of piety appear closed to them, let them be refreshed by prayers and ecclesiastical consolations and by communion of the viaticum, anointed with the sacred anointing of oil according to the statutes of the holy Fathers. PART II. GRATIAN. But for others, times of penance are to be decreed according to the quality of the sin and the judgment of those presiding. Hence Pope Leo, [epistle 77, otherwise 79, to Bishop Nicetas, c. 6]:

C. II. Let the times of penitence be fixed by the judgment of those presiding.

With moderation observed, the times of penitence are to be established by your judgment, according as you shall have perceived the minds of the converted to be devoted, likewise taking account of old age and considering the necessities of any dangers or illnesses. In these, if anyone is so gravely pressed that, while he is still doing penance, his salvation is despaired of, it is fitting that he be assisted by the grace of communion through sacerdotal solicitude.

C. III. Both the quality of the crimes and the contrition of the penitents are to be considered by the priest in imposing satisfaction.

Likewise Pope Nicholas. Concerning those who perform penance for crimes and return to the military belt, it is established that they act contrary to the sacred rules. But because the crimes are not equal, and you report that some of these persons fell into despair on account of excessive dullness while others fled to the pagans for this reason, we commit this to you for decision, since, being present, you can examine the places and circumstances of that region, the measure of the fault, and also the penance and groans of the persons coming to confession.

C. IV. Concerning the same matter.

Likewise from the Council of Laodicea, [c. 2]. To those who incur lapses of diverse sins and through prayer, confession, and penance for their evils demonstrate perfect conversion, a time of penance is to be assigned according to the quality of the sin, on account of the mercy and goodness of God. Therefore, those who are of this kind are to be recalled and joined to communion.

C. V. Let times of penance be distributed according to the quality of the sin by the bishop's judgment.

Likewise from the Third Council of Carthage, [c. 31]. Let times of penance be decreed for penitents according to the difference of their sins by the bishop's judgment.

C. VI. Let penance be given to one imploring it without respect of persons.

Likewise from the Fourth Council of Carthage, [cc. 74, 75, 80, 82, 81, 64, and 79]. Let a priest enjoin penance according to the laws upon one imploring penance, without respect of person. But let more negligent penitents be reconciled more slowly. During every time of fasting let hands be imposed upon penitents by priests. On days of remission also, let penitents bend their knees, carry the dead into the church, and bury them. But on the Lord's day let them not fast. For one who deliberately fasts on the Lord's day is not believed to be Catholic. But if penitents who attentively execute the laws of penance should happen to die on a journey or at sea, where assistance cannot be given to

them, let their memory be commended both by prayers and offerings. Hence it is read in the Eighth Synod:

C. VII. The time of penance follows the quality of the offense.

Let the time of penance be expended according to the quality of the offense.

C. VIII. Let the time and manner of doing penance be imposed upon offenders by the judgment of the one presiding.

Likewise. Let this be placed in the judgment of those who preside: for how much time or in what manner those who offend ought to do penance, because age too causes there to be a great difference in punishment for instruction. PART III. GRATIAN. With what disposition we ought to receive the penitent and cast out the impenitent is shown clearly from the same synod when it says:

C. IX. We ought to receive the penitent with the inward disposition of charity.

One who repents from the heart ought to be received just as the Lord showed when he says: "I called together my friends and neighbors, saying: Rejoice with me, because I have found my sheep that I had lost."

C. X. Let penitents love the law of God and hold iniquity in hatred.

Likewise. Let the penitent receive into himself the disposition borne by the one who said: "I have held iniquity in hatred and abhorred it," according to those things written in the sixth Psalm and in very many others, or those things the Apostle said to those who were made sorrowful according to God: "How much," he says, "it has worked in us solicitude, indeed defense, indeed indignation, indeed emulation, indeed vengeance. In all things you have shown yourselves to be circumspect in the matter." But also, in the very things in which he offended, let him do many contrary things, just as Zacchaeus did.

C. XI. Let impenitents be regarded as gentiles.

Likewise. Toward one who does not punish his sins, we ought to be such as the Lord commanded, saying: "Let him be to you as a gentile and a publican"; and as the Apostle taught, saying: "Withdraw yourselves from every brother walking in a disorderly manner and not according to the tradition that we handed down to you."

C. XII. It is better to err in the mercy of forgiving than in the severity of avenging.

Likewise John Chrysostom, [that is, the author of the *Imperfect Work*, homily on c. 23 of Matthew]. "But they bind heavy and unbearable burdens, etc." Such even now are the priests who command all justice to the people and themselves observe not even a little, evidently so that they may appear just not by doing but by speaking. Such are those who impose a heavy burden upon those coming to penance, because they say and do not; and thus, while the punishment of present penance is fled, the future punishment of sin is contemned. For just as, if you place upon the shoulders of a young man a bundle that he cannot carry, he necessarily either casts away the bundle or is crushed beneath its weight, so also a person upon whom you impose a heavy burden of penance will either reject the

penance or, undertaking it, because he cannot bear it, will be scandalized and sin further. Then, even if we err by imposing a small penance, is it not better to render an account because of mercy than because of cruelty? For where the father of the household is generous, the steward ought not to be miserly. If God is kind, why does his priest wish to appear austere?

C. XIII. It is not lawful to perform observances of the Kalends.

Likewise Pope Martin, [c. 74]. PART IV. It is not lawful to perform the unlawful observances of the Kalends, to devote oneself to idleness, or to encircle houses with laurel or the greenery of trees; this entire observance belongs to the pagans. Pope Zacharias, [in the Roman Council, c. 9]:

C. XIV. Let one who observes the Kalends according to the rite of pagans be anathema.

If anyone shall have presumed to observe the Kalends of January according to the rite of pagans, to do anything more of a new kind because of the new year, to prepare tables with lamps or banquets in houses, or to lead singers and dances through streets and squares, let him be anathema.

C. XV. Incantations furnish no remedy for human infirmities.

Likewise Augustine. Let priests admonish the faithful peoples so that they may know that magical arts and incantations can furnish no remedy for any infirmities of human beings and can heal nothing in sick, lame, or even dying animals, but that these are snares and ambushes of the ancient enemy by which that faithless one strives to deceive the human race. And if anyone shall have practiced these things, let a cleric be degraded and a layperson anathematized.

C. XVI. The Egyptian days and the Kalends of January are not to be observed.

Likewise Augustine. Do not observe the days called Egyptian or the Kalends of January, on which certain songs and feastings occur and gifts are given to one another as an augury of good fortune at the beginning of the year; or any months, seasons, days, and years; or the course of the moon, month, and sun. For one who observes or attends to these or any divinations, fates, or auguries, or consents uselessly and without cause to those observing them, tends more toward his own condemnation than toward salvation. This applies whether through certain numbers of letters and of the moon they inquire by Pythagorean necromancy into the life or death of the sick, or future prosperity or adversity; whether they attend to dream books written and falsely entitled in the name of Daniel and the lots called those of the holy Apostles, and the auguries of birds; whether they say incantations for building a house, joining marriages, or gathering herbs; whether they place little written images for any infirmity upon human beings or animals, apart from the Creed and the Lord's Prayer; or whether they believe in magical falsehoods concerning hailmakers and storms. But those who believe such persons, go to their houses, or introduce them into their own houses in order to question them should know that they have transgressed the Christian faith and baptism, have become a pagan and apostate—that is, one going backward—and an enemy of God, and have gravely incurred the wrath of God for eternity unless, amended by ecclesiastical penance, they are reconciled to God. For the Apostle says: "Whether you eat, or drink, or do anything else, do it in the name of our Lord Jesus Christ, in whom we live, move, and are." Augustine also writes concerning observations of times in the *Enchiridion*, [c. 79]:

C. XVII. It is a grave sin to observe days, months, and years.

Who would think how great a sin it is to observe days, months, years, and seasons—as those observe them who on certain days, months, or years wish or refuse to begin something because according to the vain doctrines of human beings they regard the times as auspicious or inauspicious—unless we weighed the magnitude of this evil from the Apostle's fear, who says to such persons: "I fear for you, lest perhaps I have labored among you without cause"? The same upon the epistle to the Galatians, [on c. 4]. § 1. Let the reader understand that superstitious observations of times pertain to so great a danger of the soul that the Apostle says: "I fear for you, lest perhaps I have labored among you without cause." Although this is read throughout the world in the churches with such solemnity and authority, nevertheless our assemblies are full of persons who receive from astrologers the times for undertaking affairs. Indeed, they often do not hesitate to admonish even us that nothing should be begun—whether buildings or any works of this kind—on the days they call Egyptian.

C. XVIII. It is lawful to possess herbs or stones without incantation.

Likewise Jerome. It is lawful for one suffering a demon to possess stones or herbs without incantation.

Causa XXVII

GRATIAN. A certain man who had a vow of chastity betrothed a wife to himself. Renouncing the prior agreement, she transferred herself to another and married him. The man to whom she had first been betrothed seeks her back. (Question I.) Here it is first asked whether marriage can exist between persons under vows. (Question II.) Second, is it lawful for a betrothed woman to withdraw from her betrothed and marry another?

Question I

GRATIAN. PART I. That persons under vows cannot contract marriages is proved by many authorities. For in the Council of Carthage, c. 104, a statute is found concerning widows who have violated professed continence:

C. I. Let widows who have cast aside the religious habit and chosen marriage be excommunicated.

Just as the reward of chastity is good, so it is also to be guarded with greater observance and command, so that if any widows, although still placed in their younger years and left by a husband at an immature age, shall have devoted themselves to God and, having cast aside lay clothing, appeared in a religious habit under the testimony of the bishop and church, but afterward shall have passed to secular marriages, according to the Apostle they will have condemnation because they appear to have made void the pledge of chastity that they vowed to God. Therefore, let such persons be separated from the communion of Christians and not communicate with Christians at a banquet. For if married women are guilty of adultery if they are not subject to their husbands, how much more will widows who have changed the religious state belonging to God be marked by the crime of adultery if with lustful pleasure they seize upon the devotion that they offered to God voluntarily, not under compulsion, and make a passage to second marriages? Even if, when violence assailed them, they

were oppressed by someone and afterward consented through the delight of lust to remain in marriage with the ravisher or violent man, let them be held liable to the condemnation stated above. Of such persons the Apostle says: "For when they have grown wanton, they wish to marry in Christ, having condemnation because they have made their first pledge void."

C. II. Concerning widows and virgins who depart from a religious resolve.

Likewise from the epistle of Gregory sent to Boniface. Concerning widows departing from the resolve of widowhood, about whom Your Affection wished to consult us, dearest brother, I believe you know that they were long ago condemned by Saint Paul and many holy Fathers unless they are converted. By apostolic authority we judge that they are to be condemned and barred from the communion of the faithful and the thresholds of the church until they obey their bishops and return, unwillingly or voluntarily, to the good that they began. § 1. But concerning unveiled virgins, if they have deviated, we have this decree from our predecessor of holy memory, Pope Innocent: "Those who, although not yet covered by the sacred veil, nevertheless have always declared that they would remain in the virginal resolve, although they were not veiled, nevertheless, if they marry, are to do penance for some time, because their pledge was held by the Lord. For if among human beings a contract of good faith is customarily dissolved for no reason, how much more can that promise which she covenanted with God not be dissolved without punishment, etc." § 2. If virgins not yet veiled are thus punished by public penance and excluded from the assembly of the faithful until satisfaction, how much more are widows—who are of a more perfect age and of more mature wisdom and counsel, have often experienced the fellowship of men, assumed the religious habit, and finally apostatized and returned to their former vomit—to be eliminated by us and all the faithful from the thresholds of the church and the assembly of the faithful until satisfaction and handed over to prisons, so that, according to the Apostle Paul, by handing a person of this kind over to Satan, his spirit may be saved on the day of the Lord. For of such persons the Lord speaks through Moses, saying: "Remove the evil from your midst." Of them he says through the Prophet: "The just man will rejoice when he sees the vengeance upon the impious; he will wash his hands in the sinner's blood." For of such persons and those similar to them, and those consenting to them, it is said: "Because not only those who do these things, but also those who consent to those doing them, are guilty."

C. III. Widows and virgins cannot pass to marriage after a religious resolve.

Likewise from the decree of Pope Gelasius sent to the bishops of Sicily, c. 9. We do not permit widows who have remained in a religious resolve through long observance to pass to marriage. Likewise, we prohibit virgins who happen to have passed many years of their age in monasteries from marrying.

C. IV. A woman can be corrupted through any sense of the body.

Likewise Cyprian to Pomponius concerning virginity. Nor let anyone think that she can be defended by this excuse: that it can be inspected and proved whether she is a virgin, since both the hand of midwives and the eye are often deceived; and if a virgin is found uncorrupted in that part by which a woman can be so, she could nevertheless have sinned through another part of the body that can be corrupted and yet cannot be inspected. Certainly, the intercourse itself, the embrace itself, the conversation itself and kissing, and the shameful and foul sleeping of two persons lying together—

how much disgrace and crime does it confess? If a husband arriving unexpectedly should see his betrothed lying with another, does he not become indignant and rage, and through the pain of jealousy carry a sword in his hand? And when Christ our Lord and judge sees his virgin, dedicated to him and destined for his holiness, lying with another, how indignant and angry is he? And what punishments does he threaten against heavenly unions of this kind? So that each of the brethren may be able to evade his spiritual sword and the coming day of judgment, we ought to make provision and labor with every counsel.

[C. V.]

The same, [in the same epistle]. But if they have done penance for this unlawful intercourse of theirs and withdrawn from one another, let the virgins again be inspected carefully by midwives; and if they are found to be virgins, after receiving communion let them be admitted to the church, yet with this threat: if they afterward return to the same males, or if they dwell with them together in one house and under the same roof, let them be cast out under a graver censure and not afterward be easily received into the church. But if any of them shall have been corrupted and discovered, let her who committed this crime do full penance, for she is now an adulteress not of a husband but of Christ; and therefore, after a just time has been assessed and her *exomologesis* afterward made, let her return to the church. But if they obstinately persist and do not separate from one another, let them know that with this shameless obstinacy of theirs they can never be admitted by us into the church, lest by their offenses they begin to make for others an example leading to ruin. Nor let them think that a principle of life or salvation stands for them if they are unwilling to obey bishops and priests.

C. VI. Let a cleric who has committed adultery with a nun be deposed, and a layperson excommunicated.

Likewise from the Sixth Synod, [in Trullo, c. 4]. If any bishop, presbyter, deacon, subdeacon, lector, psalmist, or doorkeeper shall have committed adultery with a woman consecrated to God, let him be deposed, because he corrupted a bride of Christ; but if he is a layperson, let him be excommunicated.

C. VII. Let widows and maidens who marry after assuming the religious habit be suspended from communion.

Likewise from the Fourth Council of Toledo, c. 8. Concerning widows and maidens who in their own homes changed to a religious habit, whether by their parents or by themselves: if afterward they believe marriages are to be joined contrary to the institutes of the Fathers or the precepts of the canons, let both be held suspended from communion until they amend what they unlawfully perpetrated. But if they neglect to amend it, let them be separated perpetually from communion or the banquet of all Christians.

[PALEA

C. VIII. Concerning the same matter.

Likewise from the Council of Pope Martin. Let no pontiff attempt to veil widows, as was established in the decrees of Pope Gelasius, chapter 13, because neither divine authority nor the form of the canons has granted it. But if she has professed continence by her own will, it is read in chapter 21 of the same Gelasius: let her intention render an account for itself to God, because, just as according to

the Apostle she was by no means prohibited from marrying if she could not contain herself, so, after deliberating with herself, she ought to preserve for God the promised pledge of chastity. But we, supported by the authority of the Fathers, sanction and freely judge in this holy council that if she voluntarily placed upon herself a veil, although unconsecrated, and in church offered an oblation to God among the veiled women, whether she wills it or not she ought thereafter to retain the habit of sanctimony, even if she wishes to affirm by oath that she placed the veil upon herself under this tenor and understanding: that she could remove it again.]

C. IX. Concerning those who, having a vow of virginity, marry while not yet covered by the sacred veil.

Likewise from the Decrees of Pope Innocent, c. 20, [in the Code of Canons, and epistle 2 to Victricius, c. 13]. But those who are not yet covered by the sacred veil, nevertheless had always declared that they would remain in the virginal resolve, etc. And below: [PALEA. Although they were not veiled, if perhaps they marry, they are to do penance for some time, because their pledge was held by the Lord. For if among human beings a contract of good faith is customarily dissolved for no reason, how much more ought that promise which she covenanted with God not to be dissolved without punishment?] For if the Apostle had said that those who departed from the resolve of widowhood had condemnation because they made their first pledge void, how much more do virgins who attempted to break their pledge have condemnation?

C. X. Consecrated virgins are not to be admitted to penance if they have married publicly.

Likewise from a decree of the same, chapter 19, [in the Code of Canons, but in the epistle to Victricius, c. 12]. Those who spiritually marry Christ, if they afterward marry publicly, are not to be admitted to penance unless those to whom they joined themselves have departed from the world. For if this principle is observed concerning human beings—that whoever marries another while her husband lives is regarded as an adulteress, and permission to do penance is not granted to her unless one of them has died—how much more is it to be maintained concerning her who previously joined herself to an immortal bridegroom and afterward migrated to human marriage?

C. XI. Shameless persons among monks or nuns are to be eliminated from the church and thrust into prisons.

Likewise from the Council of Tribur, c. 6. We command that shameless and detestable persons—namely, monks and nuns—who, after casting aside the resolve of sanctity, mingled themselves in unlawful and sacrilegious contamination and, brought through desperation to the judgment of conscience, freely begot children from unlawful embraces, are to be eliminated from the assembly of monasteries and gatherings of churches, so that, shut within their prisons and lamenting so great a crime with continual mourning, they can be thoroughly purified by the purgatorial fire of penitence, so that at least at death, solely in view of mercy, assistance may be given to them through the grace of communion.

C. XII. If a monk and a virgin consecrated to the Lord marry, let them be excommunicated.

Likewise from the same. We decree that it is not lawful for a virgin who has consecrated herself to God, and likewise a monk, to contract the rights of marriage. But if they are found perpetrating this, let them be excommunicated. We decree, however, that with respect to those who confess, the bishop of that place has authority to grant mercy and humanity.

C. XIII. While they live, let those who knowingly unite with nuns afflict themselves with the lamentations of penance.

Likewise from the same. Therefore, let those who knowingly are joined in marriage with nuns, to the injury of Christ, be separated according to the censure of Christian zeal; and let it never be granted to them to be bound by the conjugal bond, but while they live let them afflict themselves vehemently with the lamentations of penance.

C. XIV. Let those who associate themselves with sacred virgins be deprived of holy communion.

Likewise from the same. We have learned that certain persons rashly associate themselves with sacred virgins and after a resolve dedicated to God mingle in incestuous compacts and sacrilegious unions. It is equitable that they immediately be driven from holy communion and not be received at all except through public and approved penance. Nevertheless, let viaticum not be denied to them as they depart from the world if they have worthily repented.

C. XV. Let a woman who is unwilling to withdraw from fornication be recalled and enclosed in a monastery.

Likewise Gregory. It has come to us that a certain most wicked man, by diabolical instigation, persuaded a woman consecrated to God to leave a monastery; and although she was recalled by a certain man to the place from which she had departed, that most wicked man, again casting her out of the monastery by wicked persuasion, shamelessly retains her with himself. We wish her to be recalled and enclosed in the monastery by the authority of your episcopate.

C. XVI. It is not lawful for widows to depart from a sacred resolve after receiving the veil.

Likewise from the Council of Orléans, c. 3. Concerning widows who by voluntary will receive from the altar the veil of sacred life, the synod decreed that they remain in the same resolve. For we have decreed that it is not lawful, after they have once consecrated themselves to the Lord beneath the veil, for permission again to be granted to them to lie to the Holy Spirit.

C. XVII. Let one who takes in marriage a woman covered by the sacred veil be anathema.

Likewise from the same. If anyone shall have taken in marriage a woman consecrated by the sacred veil and, after a resolve dedicated to God, shall have mingled in incestuous compacts and sacrilegious unions, as is read in chapter 20 of the constitutions of Pope Gelasius, it is equitable that he immediately be driven from holy communion and not be received at all except through public and approved penance. If they have repented, let viaticum not be denied them as they depart from the

world. § 1. In the Council of Chalcedon, chapter 17: "Let those perpetrating this be excommunicated; let mercy be granted to those confessing by the authority of the bishop." § 2. In the epistle of Pope Siricius, c. 6: "If veiled women consecrated to God, after casting aside the resolve of sanctity, secretly mingle themselves in sacrilegious contamination and publicly and freely beget children from unlawful embraces, it has been judged that these marriages and detestable persons are to be eliminated from the assembly of monasteries and gatherings of churches, so that, thrust into prisons, they may lament so great a crime with continual mourning." Hence, both by the word of the Lord and by canonical authority, we command in this holy synod that they be separated altogether and bound by oath not thereafter to dwell under one roof.

C. XVIII. Let one who has cast aside religious clothing be compelled to return to the habit and enclosed in a monastery.

Likewise Gregory to Vitalian, bishop of Siponto, [Book VII, indiction 1, epistle 9]. If you either knew how to be the guardian of the religious habit or were a bishop, it would not have been lawful, while you were placed there, for the daughter of Tullianus, master of soldiers of glorious memory, after casting aside religious clothing, either to return to secular dress or to send a perverse letter to us. But because you are weighed down by excessive sloth and torpor, to your disgrace an unlawful matter has for the present been committed there with impunity. For, as we stated before, if you had been solicitous, the punishment of the most wicked woman ought to have reached us before her fault. Therefore, because you are so dull and so negligent that, unless you experience canonical coercion against yourself, you do not know how to preserve strictness and discipline in others, we will demonstrate to you at a fitting time, if it pleases the Lord, in what manner you ought to be solicitous. § 1. Therefore, upon receiving the present writings, awake and, now at last aroused, execute what, oppressed by idleness, you have delayed until now. Let it therefore belong to your urgency, together with Sergius our defender, to seize the aforesaid woman and immediately not only to recall her, without any excuse, to the habit wickedly contemned, but also to thrust her into a monastery where she can be guarded altogether strictly; and display such complete solicitude concerning her that by your strictness she may be able to recognize how impious is what she committed. § 2. In this matter, if any layperson—which we do not believe—shall attempt by any device to oppose you, suspend him from participation in most holy communion and hasten to report it to us, so that, since he did not perceive by his own consideration how execrable is what he presumes, he may recognize it by the quality of his correction. § 3. But in all these things endeavor to show yourself so cautious and vigilant that you may be able not to double your fault by neglect but to lessen it somewhat by solicitude.

C. XIX. Let a woman who returned from a religious resolve to secular dress be handed over to strict custody.

The same to Sergius the defender, [Book VII, indiction 1, epistle 10]. If you were a man or possessed any discernment, you ought to have existed as such a guardian of regular discipline that unlawful things committed there would be corrected by punishment before a report of them reached us. But while excessive foolishness makes you negligent, we are not only offended concerning those things but are likewise provoked to punish your sloth. Therefore, with every delay and every excuse set aside, together with our brother and fellow bishop Vitalian hasten to seize the daughter of Tullianus, master of soldiers of glorious memory, who, after casting aside the religious garments that she

voluntarily assumed, disfigured herself with lay clothing; recall her again to the religious habit and send her into a monastery where she can be guarded altogether strictly. Do not permit her custody to be relaxed in any way until you receive our writings again. For if in any way you are negligent or slow in this matter, know that punishment will be inflicted upon you so strictly that you may be able, through punishment cutting away, to learn what you do not know from yourself; because, as we have said, if you possessed the understanding of a human being, you ought already to have recognized and done, even with punishment, the things that you are now commanded to do.

C. XX. Permission to marry is not granted to those who have decreed to observe continence.

Likewise Augustine, *On the Conflict of Vices and Virtues*, [c. 24]. Permission to marry is granted to some —namely, those who have by no means professed virginity or the chastity of widowhood. But it is not granted to others—namely, those who have decreed to be virgins or continent. Fornication, however, is conceded with impunity to no one.

C. XXI. Those who violate a resolve of continence are worse than adulterers.

The same in the book *On the Good of Marriage*. It is manifest that women who have lapsed from the better resolve of holier chastity that is vowed to God, if they marry, are worse than adulteresses.

C. XXII. A monk and a virgin who has dedicated herself to God cannot be joined in marriage.

Likewise from the Council of Chalcedon, [c. 16]. If any virgin has dedicated herself to God, and likewise a monk, it is not lawful for them to be joined in marriage. But if they are found doing this, let them remain excommunicated. We establish, however, that humanity can be shown to them if the bishop of the place has so approved.

C. XXIII. Let a deaconess who marries after ordination be anathema.

Likewise from the same, [c. 15]. We establish that a deaconess ought not to be ordained before forty years, and this with diligent examination. But if she has received ordination and has observed the ministry for however much time, and afterward hands herself over to marriage, doing injury to the grace of God, let her be anathema together with the one who joined in her marriage.

C. XXIV. Those who violate promised virginity are numbered among bigamists.

Likewise from the Synod of Ancyra, [c. 18]. As many as have violated promised virginity after contemning their profession ought to be regarded among digamists—that is, those who have passed to second marriages.

C. XXV. Communion is not to be given even at the end to virgins dedicated to God if they have served lust.

Likewise from the Council of Elvira, [c. 13]. If virgins who dedicated themselves to God shall have lost the covenant of virginity and served that same lust, not understanding what they lost, it was resolved that communion is not to be given to them even at the end. But if they shall have persuaded

themselves that they lapsed through infirmity of the body, and during the time of their life have done penance and abstained from intercourse, it was resolved that they ought to receive communion at the end.

C. XXVI. Let the daughter of a cleric be compelled to penance if, after being vowed, she takes a husband.

Likewise from the Council of Pope Martin, [c. 30]. Concerning the daughter of a bishop, presbyter, or deacon: if she shall have been vowed and takes a husband, if her father or mother receives her into their affection, let them be held as strangers from communion. But let the father know that he will render an account in council. Let the woman not be admitted to communion unless, after her husband has died, she has done penance. But if while he is living she withdraws and does penance or seeks communion, let her receive it when she is failing at the final end of her life.

C. XXVII. A woman under a vow is not to be received into the church unless she has ceased to sin.

Likewise from the First Council of Toledo, [c. 16]. A woman under a vow who sins is not to be received into the church unless she has ceased to sin; and if, after ceasing, she has performed suitable penance for ten years, let her receive communion. But before she is admitted to prayer in the church, let her approach no banquet of a Christian woman. But if she has been admitted, let even the woman who received her be held in abstinence. Let an equal punishment also constrain her corrupter. But she who has taken a husband is not to be admitted to penance unless either she has begun to live chastely while her husband is living or after he has died.

C. XXVIII. Concerning a nun who is led to a fall into adultery.

Likewise Gregory to John, bishop of Cagliari, [Book III, epistle 9]. If any of the nuns, either through a former permission or through a depraved custom of impunity, has been led to a fall into adultery, or in future shall have been led into that abyss, after the fitting severity of punishment we wish her to be committed for penance to another and stricter monastery of virgins, so that there she may devote herself to prayers and fasts, may thus make progress by doing penance, and may furnish to others a fearsome example of stricter discipline. But the man who shall have been found in any iniquity with women of this kind is to be deprived of communion if he is a layperson; but if he is a cleric, after also being removed from his office, let him be thrust into a monastery continually to lament his transgressions.

C. XXIX. After worthy penance, let those who transgress against religious women receive communion.

The same to Bishop Januarius, [Book III, epistle 24]. But those who transgressed against women who departed from monasteries and are now said to be suspended from communion, if Your Fraternity shall have perceived that they worthily repented of such a crime, we wish you to recall to holy communion.

C. XXX. Concerning the laws of the emperors.

Likewise from the Novels of Emperor Justinian. If anyone shall have abducted, solicited, or corrupted an ascetic woman, a deaconess, a nun, or another woman having a religious life or habit, let his goods

and those of the persons contaminated by participation in this crime be claimed for the religious house in which such a woman dwelt, through the religious bishops, stewards, provincial governors, and their officials; but let those persons themselves be subjected to capital punishment. Let the woman, moreover, be sought everywhere and, together with her property, handed over to a more secure monastery. But if she was a deaconess having legitimate children, let the lawful portion be furnished to her children.

C. XXXI. Let women veiled under the pretext of religion observe the religious habit chastely.

Likewise from a decree of Pope Eugenius, [II, in the Roman Council, c. 29]. Let women veiled under the pretext of religion either live according to the rule in a monastery or chastely observe the habit they assumed in their own homes.

C. XXXII. Let a monk who takes a wife never obtain an office of sacred rank.

Likewise from the Council of Orléans, [I, cc. 22 and 23]. Let it not be lawful for a monk to have an *orarium* or girdles in a monastery. And if afterward he shall have been joined to a wife, as one guilty of so great a transgression let him never obtain an office of ecclesiastical rank.

C. XXXIII. Before professing continence, let widows marry whom they wish.

Likewise Augustine, *On the Good of Widowhood*, [c. 28]. Let widows who do not contain themselves marry before, having professed continence, they vow it to God. Unless they render what they vow, they are justly condemned.

C. XXXIV. Let a widow not be permitted to abandon her vow after a profession of continence.

Likewise Nicholas to Archbishop Charles and his suffragans. Indeed, if a widow who placed the sacred veil upon her head prayed in church among the other veiled women and offered oblations with them, and if she professed that she would remain in the same habit, promising that she would never lay aside the veil of religion, let her not presume to depart from the observance of religion.

C. XXXV. A profession of widowhood made before a bishop after the habit has been assumed is permitted to no one to violate.

Likewise from the Council of Orange, [c. 27]. We say that a profession to preserve widowhood, made before a bishop in the sacristy after a widow's garment has been imposed before the bishop, is not to be violated. We decree that one who deserts such a profession is deservedly to be condemned.

C. XXXVI. Let the manner and solemnity of making a profession be observed in this order.

Likewise from the Council of Toledo, [X, c. 5]. Let all women coming to sacred religion cover their heads with a mantle and make a written and confirmed profession, after which writing let them not be permitted to relapse into the audacity of transgression. § 1. But whichever of all these women shall be found to have given either their mind or their clothing over to transgression, let them bear a

sentence of excommunication and, after their habit has again been changed, let them remain bound in monasteries under the hardships of arduous penance until they close their final day.

C. XXXVII. Those who violate the bodies of women consecrated to God are sons of perdition.

Likewise from the Council of Arles. It is to be known by all that the bodies of women consecrated to God, consecrated to God through the vow of their own pledge and the words of a priest, are proved by the testimonies of the Scriptures to be temples; and therefore their violators are known to be sacrilegious persons and, according to the Apostle, sons of perdition.

[PALEA.

C. XXXVIII. Concerning the same matter.

Likewise. If widows choose to marry before they profess continence, let them marry those whom by their own will they wished to have as husbands. Let a similar condition also be maintained concerning virgins, and let them not be compelled to receive husbands contrary to the will of their parents or their own will.]

C. XXXIX. Let monks joined to wives be confined in monasteries.

Likewise Gregory to Artemius the subdeacon, in epistle 41, [Book I]. And because we have learned that some monks have leapt forth to such great wickedness that they publicly take wives, we command you to seek them out with every vigilance and, after exercising coercion upon those found, cause them to be returned to the monasteries where they had been monks.

C. XL. Concerning a nun who is led to a fall into adultery.

Likewise Pope Innocent, [II, in the Roman Council, c. 7, § *Ut lex*]. So that the law of continence and purity pleasing to God may be extended among ecclesiastical persons and sacred orders, we establish that bishops, presbyters, deacons, subdeacons, canons regular, monks, and professed converts who, transgressing their sacred resolve, shall have presumed to join wives to themselves are to be separated. For we judge that a union of this kind, which is known to have been contracted contrary to the ecclesiastical rule, is not matrimony. After being separated from one another, let them also perform penance worthy of such great transgressions. We decree that this same thing is also to be observed concerning women religious if—may it not happen—they attempt to marry.

GRATIAN. By all these authorities, those under vows are prohibited from contracting marriages, and some of them, if they contract them, are ordered to be separated. PART II. Augustine, on the contrary, asserts that separations of such persons are sinful, speaking thus, [in the book *On the Good of Widowhood*, c. 8]:

C. XLI. The marriages of persons under vows are not to be dissolved.

The good of marriage is indeed always a good—a good that has always existed among the people of God—but at one time it was obedience to the law, now it is a remedy for infirmity, and in some persons it is a consolation of human nature. For applying oneself to the procreation of children, not after the manner of dogs through promiscuous use of women but in the honorable order of marriage, is now an affection to be approved in a human being; and nevertheless a Christian mind thinking

upon heavenly things more praiseworthily surpasses and conquers it. But because, as the Lord says, "Not all receive this word," let one who can receive it receive it; let her who does not contain herself marry; let her who has not begun deliberate; let her who has set out persevere. Let no occasion be given to the adversary; let no offering be withdrawn from Christ. § 1. For in the bond of marriage, if chastity is preserved, condemnation is not feared. But in virginal and widowed continence the excellence of a more ample gift is sought; once it has been sought and chosen and offered by the obligation of a vow, not only to enter upon marriage, but even if they do not marry, to will to marry is now damnable. For to demonstrate this the Apostle did not say, "When they have lived in pleasures, they marry in Christ," but, "They wish to marry, having condemnation," he says, "because they have made their first pledge void"—even if not by marrying, nevertheless by willing. This is not because marriages themselves, even those of such women, are judged worthy of condemnation; rather, the deceit against their resolve is condemned, fidelity to a broken vow is condemned, and what is condemned is not the taking up of a lower good but the fall from a higher good. Finally, such women are condemned not because they entered into the pledge of marriage afterward but because they made void their first pledge of continence. To intimate this briefly, the Apostle did not wish to say that those who marry after a resolve of more ample holiness have condemnation—not because they are not condemned, but lest marriages themselves be thought condemned in them. Rather, when he had said, "They wish to marry," he immediately added, "having condemnation," and said why: "because they have made their former pledge void," so that it might appear that the will which fell from its resolve is condemned, whether marriages follow or are absent. § 2. Consequently, those who say that the marriages of such women are not marriages but rather adulteries do not seem to me to consider with sufficient acuteness and diligence what they say. For a likeness to the truth deceives them. Because those who do not marry in Christian holiness are said to choose marriage with Christ, some persons argue from this, saying: If a woman who marries another while her husband lives is an adulteress, as the Lord himself defined in the Gospel, but Christ lives, over whom death shall have no further dominion, then she who had chosen marriage with him is an adulteress if she marries a man. § 3. Those who say this are indeed moved by an acute argument, but they pay too little attention to how great an absurdity follows this reasoning. For since a woman, while her husband is living and with his consent, praiseworthily vows continence to Christ, according to their reasoning no woman ought to do this, lest Christ himself—may it be impious to think it—commit adultery, to whom she marries while her husband is living. Next, since first marriages are of better merit than second marriages, may it be far from holy widows to hold the opinion that Christ appears to them as though a second husband. For they had him even before, when they faithfully served in subjection to their husbands, not carnally but spiritually as a husband; the church herself, of which they are members, is his spouse, and in the integrity of faith, hope, and charity she is wholly a virgin, not only in sacred virgins but also in married faithful persons. For the Apostle says to the universal church, of which all those women are members: "I have betrothed you to one husband, to present you as a chaste virgin to Christ." But that husband knows how to make a virgin spouse fruitful without corruption, for he was also able to have a mother bring him forth in that same flesh without corruption. § 4. Moreover, through this insufficiently considered opinion, by which they think that the marriages of women who have lapsed from a sacred resolve are not marriages if they marry, no small evil occurs: wives are separated from husbands as though they were adulteresses, not wives; and while they wish to restore the separated women to continence, they make their husbands true adulterers when, while their

wives are living, they take others. § 5. Wherefore I indeed cannot say that if women who have lapsed from a better resolve marry, their unions are adulteries and not marriages; but I would plainly not hesitate to say that lapses and falls from the holier chastity that is vowed to God are worse than adulteries. For if—as is in no way to be doubted—it pertains to the offense of Christ when a member does not preserve fidelity to her husband, how much more gravely is he offended when fidelity is not preserved to him in that matter in which he demands what was offered though he had not demanded that it be offered? For when anyone does not render what he vowed, not compelled by command but admonished by counsel, the less necessity he had to vow, the more he increases the iniquity of the defrauded vow.

C. XLII. Concerning widows who have made their first pledge void.

Likewise Gelasius, [in the epistle to the bishops of Lucania and Bruttium, c. 23]. We have spoken above broadly and sufficiently concerning widows who are to be veiled under no blessing. But if by their own will, with a changeable mind, they tread underfoot the chastity professed after their former marriage, it will be at their peril by what satisfaction they ought to placate God, because according to the Apostle they have made their first pledge void. For just as, if perhaps they could not contain themselves, they were by no means prohibited from marrying according to the Apostle, so, after deliberating with themselves, they ought to preserve the pledge of chastity promised to God. We, however, do not cast any snare upon such women, but only set before them the exhortations of eternal reward and the punishments of divine judgment, so that our conscience may be absolved and their intention may render an account for itself to God. For what the blessed Apostle Paul testifies concerning their conduct and actions is to be guarded against. We pass over explaining it more fully, lest the unstable sex appear not so much to be deterred as admonished.

C. XLIII. Concerning the same matter. Likewise Theodore.

If anyone has a vow of virginity, etc. GRATIAN. It is clearly shown in the chapter concerning the ordination of clerics which persons under vows are ordered by the preceding authorities to withdraw from one another, and whose marriages are not to be dissolved by the authority of Augustine and Theodore. § 1. Moreover, that statement of Innocent by which sacred virgins who marry publicly are prohibited, while the man to whom they joined themselves is living, from being admitted to penance is not to be understood so that women who have wished worthily to do penance are excluded from penance for any period; rather, those who are unwilling to withdraw from the incestuous union are prohibited from being admitted to penance. For after a resolve of sacred religion, one who has neglected to return to the habit of her profession cannot be reconciled to God through penance. For the man to whom she joined herself will then be dead to her when she has withdrawn altogether from his unlawful embraces, so that this may be the sense of the chapter: "Those who spiritually marry Christ, if they afterward marry publicly, we judge are not to be admitted to penance unless those to whom they joined themselves have departed from the world"—with respect to the women marrying them, it must be understood. For then do the men depart from the world, then do they die, when the women have altogether estranged themselves from their concupiscence, just as the world is said to be dead to one whom it does not bind by its enticements, and one is declared dead to the world who desires nothing of the world. That this is to be understood thus the same Innocent shows from the following example, saying: "Whoever marries another while her husband is living is to be

regarded as an adulteress, nor is a place for doing penance granted to her unless one of these has died." This is to be understood of a woman who has been abandoned: if she marries another while her husband is living, she is an adulteress and is not admitted to penance unless either the first returns to the dust from which he was taken or the second, by ceasing from union with her, dies to her, as was said above. Therefore, because Christ, whom they marry spiritually, now dies no more and death shall have no further dominion over him, it remains that the man whom they marry second must die to them. In either case, however, unless it were understood thus, Innocent would be contrary to the Lord, who says through the Prophet, "At whatever hour the sinner shall have been converted, etc.," and would be found opposed to all interpreters of the divine law. This same thing is proved by the authority of that chapter in which a woman under a vow who has taken a husband is prohibited from being admitted to penance unless either both have professed continence or the man to whom she joined herself has departed from this world.

Question II

GRATIAN. PART I. The second question follows, in which it is asked whether a girl betrothed to one person can renounce the prior agreement and transfer her vows to another. (Question I.) Here it must first be seen whether there is a marriage between them. (Question II.) Second, whether they can withdraw from one another. § 1. That these persons are spouses is easily proved both from the definition of marriage and from the authority of many persons. For nuptials or matrimony are a union of a man and a woman retaining an indivisible manner of life. But between these persons there was a union that required an indivisible manner of life. For there was consent between them, which is the efficient cause of matrimony, according to that statement of Isidore: "Consent makes matrimony." Likewise John Chrysostom upon Matthew, [that is, the author of the *Imperfect Work*, homily 32 on Matthew]:

[C. I.]

"Indeed, intercourse does not make matrimony, but the will; therefore separation of the body does not dissolve it, but separation of the will. Therefore, one who dismisses his spouse and does not take another is still a husband. For although he is now separated in body, he is nevertheless still joined in will. Therefore, when he takes another, he then dismisses her fully. Thus it is not the man who dismisses who commits adultery, but he who marries another."

[C. II.]

Likewise Pope Nicholas, [in the responses to the Bulgarians, c. 3]. "According to the laws, let the consent alone of those whose unions are at issue suffice. If this alone is absent, all other things, even when celebrated with intercourse itself, are frustrated." [GRATIAN.] Therefore, since consent—which alone makes matrimony—occurred between these persons, it is apparent that they were spouses. But it is asked what consent makes matrimony: consent to cohabitation, consent to carnal union, or both? If consent to cohabitation makes matrimony, then a brother can contract matrimony with a sister; if consent to carnal union does so, there was no marriage between Mary and Joseph. For Mary had vowed that she would persevere as a virgin. Hence she said to the angel: "How shall this be, since I know not a man?"—that is, I resolved that I would not know one. For it was not necessary to ask how she could have a son merely because she did not then know a man, but because she had

resolved that she would never know one. § 1. Therefore, if afterward she consented to carnal union contrary to her resolve, she became guilty in mind of violating her virginal vow, even if not in deed. It is impious to think this concerning her; but, as Augustine says:

[C. III.]

"Blessed Mary resolved in her heart that she would preserve a vow of virginity, but she did not express that vow of virginity with her mouth. She subjected herself to the divine disposition when she resolved that she would persevere as a virgin unless God revealed otherwise to her. Therefore, committing her virginity to the divine disposition, she consented to carnal union, not by desiring it but by obeying divine inspiration in either event. But afterward, when she bore a son, what she had conceived in her heart she expressed with her lips together with her husband, and each remained in virginity. § 1. Therefore, intervening consent to cohabit and to retain an indivisible manner of life makes them spouses. An indivisible manner of life is for her to show herself to her husband in all things as she is to herself, and conversely. Thus it pertains to an indivisible manner of life that without the consent of her lawful husband she cannot sometimes devote herself to prayer or profess continence. Therefore, because this consent existed between these persons, it is apparent that they were spouses."

[PALEA. C. IV.

John Chrysostom—that is, the author of the *Imperfect Work*, homily 32 on Matthew. Every thing is dissolved through the same causes through which it arises. For intercourse does not make matrimony, but the will; and therefore separation of the body does not dissolve it, but separation of the will. Therefore, one who dismisses his spouse and does not take another is still a husband. For although he is now separated in body, he is nevertheless still joined in will. Therefore, when he takes another, he then plainly dismisses her. Thus it is not the man who dismisses who commits adultery, but he who marries another.] GRATIAN. Likewise, they are proved to be spouses by authority. For Ambrose says in the book *On Virgins*, [c. 6]:

C. V. A marital compact, not the deflowering of virginity, makes matrimony.

When marriage is initiated, the name of marriage is assumed. The deflowering of virginity does not make marriage, but a marital compact. Accordingly, marriage exists when she is joined to a man, not when she is known through union with the man.

C. VI. They are called spouses from the first pledge of betrothal.

Likewise Isidore, *Etymologies*, Book IX, c. 7. They are more truly called spouses from the first pledge of betrothal, although marital intercourse is still unknown between them.

[PALEA. C. VII.

That an interposed condition has no force is proved from the African Council.]

[PALEA.

C. VIII. Concerning the same matter.

Whoever shall have betrothed a woman under the name of a condition and afterward wished to leave her, we say that the condition is broken and the betrothal is to be held irrefragably.]

C. IX. Concerning the same matter.

Likewise Augustine, *On the Good of Marriage*, [Book I, c. 11]. She is called a spouse from the first pledge of betrothal, though he had not known her by intercourse, nor was he going to know her; nor had the designation of spouse perished or remained false where there had not been, and was not going to be, any commingling of flesh. § 1. Therefore both parents of Christ merited to be called faithful spouses—not only she, his mother, but also he, his father, just as he was also the spouse of his mother—each in mind, not in flesh.

C. X. The threefold good of marriage existed in the parents of Christ.

Likewise in the same work, [book and chapter]. Thus every good of nuptials was fulfilled in those parents of Christ: fidelity, sacrament, offspring. We recognize the Lord himself as the offspring; fidelity, because there was no adultery; sacrament, because there was no divorce—that is, no separation. There alone marital intercourse did not occur, because in the flesh of sin it could not occur without the shameful concupiscence of the flesh that came from sin, without which he who was to be without sin wished to be conceived. GRATIAN. Likewise in Leviticus the Lord commanded Moses, saying: "If anyone shall have violated another's betrothed woman in the field, let him die by death, because he violated another's wife." § 1. Likewise, in the laws of rulers a betrothed woman is ordered to mourn the death of her betrothed as though he were her husband. Likewise, it is found in the Canons:

C. XI. A brother cannot marry his brother's betrothed after his death.

If anyone shall have betrothed a woman to himself and, with the moment of death intervening, was unable to know her, his brother cannot take her as a wife.

[C. XII.]

Likewise Gregory to Emperor Maurice, concerning a certain count who married the betrothed wife of his dead nephew. Let one who has taken in marriage the betrothed girl of his kinsman be anathema, both he and all who consent to him, because according to the law of God he is decreed to die. § 1. For it is the custom of divine law to call betrothed women wives, as in the Gospel: "Take Mary your wife," and that statement in Deuteronomy: "If anyone shall have violated the betrothed girl of any man in a field or in any place, or brought her into his house, let him die, because he violated the wife of his neighbor"—not one who was already a wife, but one who was to become a wife through her parents. And below: § 2. Just as it is lawful for no Christian to take in marriage anyone from his own consanguinity or one whom his kinsman had, so also it is not lawful to take anyone from the consanguinity of his wife.

C. XIII. After his wife's death, it is lawful for a man to take another, but not a repudiated or betrothed woman.

Likewise Jerome. Another, fourth kind of lawful marriage is added. When anyone's wife has died, it is lawful for him to take another, but not one repudiated or betrothed to a man, but a free woman; a woman ought to do likewise. Hence Paul also says: "A woman who is under a husband is bound under the law of her husband for as long as her husband lives." Therefore, while her husband is living, she will be called an adulteress if she is joined to another man. But if her husband has died, she is freed from the law of her husband, so that she is not an adulteress if she is joined to another man.

C. XIV. After anyone's death, let no one of his consanguinity take his betrothed.

Likewise Gregory. If anyone shall have betrothed or pledged himself to a woman, although afterward, with the day of his death intervening, he was unable to take her as his wife, nevertheless it is lawful for no one of his consanguinity to take her in marriage; and if this is found to have been done, let them be separated altogether.

C. XV. Concerning the same matter.

Likewise Pope Julius. If anyone shall have betrothed or pledged himself to a wife and, whether with the day of death intervening or with certain other causes arising, has not known her, neither his surviving brother nor anyone of his consanguinity may ever take that same woman as his wife. PART II. GRATIAN. By all these authorities these persons are proved to be spouses. But Augustine testifies to the contrary, saying:

C. XVI. There is no matrimony between those whom sexual commingling does not unite.

There is no doubt that a woman with whom it is shown that there was no sexual commingling does not pertain to matrimony.

C. XVII. That woman in whom the nuptial mystery is not celebrated does not pertain to matrimony.

Likewise Pope Leo. Since the partnership of nuptials was instituted from the beginning in such a way that apart from the commingling of the sexes nuptials do not possess within themselves the sacrament of Christ and the church, there is no doubt that a woman in whom it is shown that there was no nuptial mystery does not pertain to matrimony.

[PALEA. C. XVIII.

Benedict, servant of the servants of God, to the patriarch of Grado, greeting, etc. The law of the divine constitution placed the apostolic see as teacher of the whole world, so that whatever is doubted anywhere, the rationale concerning it may be sought from that see. Now a certain John of your people addressed us, the occupant of that see, by his letters and asked concerning the marriage of his surviving daughter. Her deceased sister had been betrothed by simple words to a certain young man named Stephen and was overtaken by death before she came to the nuptials. He asked, namely, whether matrimony can be celebrated between that same young man and the surviving daughter or

not. For he testified that the rationale of this matter is regarded as doubtful among you. With God teaching, we render it most certain in these words. That first-formed man, our root and origin, seeing the rib taken from him formed into a woman, brought forth among other things in a prophetic spirit: "For this reason a man shall leave father and mother and cleave to his wife, and the two shall be in one flesh." By these words it became known that a man and woman can become one flesh in no other way unless they cleave to one another by carnal union. Therefore, one who was in no way commingled with a woman unrelated to him by the nuptial bond—by what compact can they become one flesh through bare words of betrothal? We are wholly unable to perceive it. For blood relationship is expressed by words, not effected by words. Nor does a kiss produce relationship, since it effects no commingling of blood. But because the matter of this John stands altogether thus—that he wishes to unite his second daughter in nuptials to the man to whom he had already determined to betroth the first—by the censure of apostolic authority we command that this can be done without the fault of any crime if it accords with the will of both parties. For why should that be prohibited which holy Scripture never declares is to be prohibited? Nor do secular laws say anything of this kind among the persons whom they enumerate as not contracting nuptials with one another. Therefore, do not deny what you teach is to be denied by no reason.] GRATIAN. Likewise, the Apostle commands that the wife render the debt to the husband and the husband to the wife, except perhaps by consent for a time so that they may devote themselves more readily to prayer. From this it is given to be understood that without the consent of the other it is not lawful for either to devote himself or herself to prayer. § 1. Likewise, a man cannot assume a resolve of a better life without his wife's consent, and conversely. Hence Gregory writes to the patrician Theoctista, [Book IX, epistle 39]:

C. XIX. Marriages ought not to be dissolved for the sake of religion.

There are some who say that marriages ought to be dissolved for the sake of religion. But it is to be known that, although human law has permitted this, divine law has prohibited it. For Truth himself says: "What God has joined, let man not separate." He also says: "It is not lawful to dismiss a wife except for the cause of fornication." Who, therefore, would contradict this legislator? We know that it is written: "The two shall be in one flesh." Therefore, if husband and wife are one flesh, and for the sake of religion the husband dismisses his wife, or the wife her husband, who remains in this world or perhaps passes over to unlawful acts, what sort of conversion is this, in which one and the same flesh in one part passes to continence and in another part remains in pollution? But if it pleases both to lead a continent life, who would dare accuse this, since it is certain that almighty God, who permitted lesser things, did not prohibit greater things? For in two ways holy persons are accustomed to abstain even from lawful things: sometimes so that they may increase their merits before almighty God, and sometimes so that they may wipe away the faults of their past life. § 1. Consequently, when good spouses desire either to increase merit or to erase the faults of their past life, it is lawful for them to bind themselves and seek a better life. For we know that many saints both first led a continent life with their spouses and afterward passed to the governance of the holy church. But if the woman does not follow the continence that the man seeks, or the man refuses what the wife seeks, the marriage cannot be divided, because it is written: "The woman does not have power over her own body, but the man; likewise the man does not have power over his own body, but the woman."

C. XX. A woman assigned to a monastery without her husband's consent is not prohibited from returning to union with him.

The same to Leo, bishop of Catania, [Book III, epistle 34]. We have learned from the report of many persons that this was formerly the custom among you: subdeacons lawfully united with their wives. So that no one might presume to do this anew, it was prohibited by Servusdei, deacon of our see, on the authority of our predecessor, in this manner: at that time those who had already been joined to wives were to choose one of two things—that is, either they were in no way to presume to minister or they were to abstain from their wives. And, as is said, Speciosus, who was then a subdeacon, suspended himself from the office of administration for this reason; until the time of his death he indeed discharged the office of notary and ceased from the ministry that a subdeacon ought to perform. After his death, because his widow Honorata was joined to a husband, we have learned that she was assigned by Your Fraternity to a monastery. Therefore, if, as is reported, her husband suspended himself from administration, it ought not to harm the aforesaid woman that she passed to the second vows of marriage, especially if she was not joined to the subdeacon with such an intention that she would abstain from the pleasures of the flesh. Therefore, if you know the truth to stand as we have been informed, it is altogether fitting that you release the aforesaid woman from the monastery, so that she can return to her husband without any fear.

C. XXI. One who assumed religious clothing without his wife's consent is compelled to return to her.

The same to Hadrian, notary of Palermo, [Book IX, epistle 44]. Agathosa, the bearer of the present writings, complained that her husband was converted in the monastery of Abbot Urbicus contrary to her will. Wherefore we command Your Experience to examine by diligent inquiry whether perhaps he was converted with her consent or whether she herself promised to change her state. If it finds this, let it both provide that he remain in the monastery and compel her to change her state as she promised. But if neither of these is the case, and you learn that the aforesaid woman did not formerly commit the crime of fornication—for which it is lawful to dismiss a wife—lest his conversion become an occasion of perdition to the wife left in the world, we wish you, every excuse ceasing, to restore her husband to her even if he has already been tonsured. For although secular law commands that for the sake of conversion a marriage can be dissolved when either party is unwilling, divine law nevertheless does not permit this to be done. For no reason permits a man to dismiss his wife except for the cause of fornication, because after one body is effected from a man and woman through the union of marriage, it cannot in one part be converted and in another part remain in the world.

C. XXII. Without his wife's consent, a man cannot assume a religious resolve.

Likewise from the Eighth Synod. If any married man wishes to be converted to a monastery, he is not to be received unless he has first been released by his spouse professing chastity. For if she marries another through incontinence while he is living, she will without doubt be an adulteress. Nor is the conversion of that man received before God when the prostitution of the marital covenant follows it. Therefore, such persons then follow Christ without fault after abandoning the world if they possess by equal will a mutual consent to chastity.

C. XXIII. Without the bishop's knowledge, it is not lawful for a husband and wife to separate for the sake of religion.

Likewise from the Synod of Pope Eugenius, [II, in the Roman Synod, c. 36]. If a husband and wife consent between themselves to separate solely for a religious life, let it by no means be done without the bishop's knowledge, so that they may be established by him in individually designated places. For if the wife, or either of them, is unwilling, the matrimony is not dissolved even for such a reason.

C. XXIV. It is not lawful for a man to practice continence without his wife's will.

Likewise Augustine, *On Adulterous Marriages*. If you abstain without your wife's will, you grant her license to fornicate, and her sin will be imputed to your abstinence.

C. XXV. A man is not to be received into a monastery unless his wife is converted.

Likewise Gregory to Abbot Urbicus, [Book V, epistle 49]. Because Agatho, the bearer of the present writings, desires to be converted in the monastery of Your Charity, we exhort you to receive him with every gentleness and devotion. § 1. Know, nevertheless, that he is to be received in this way: if his wife likewise wishes to be converted. For since the one body of both has been made through the union of marriage, it is unfitting for one part to be converted and the other part to remain in the world.

C. XXVI. It is not lawful for a wife to assume vows of continence unless her husband has chosen the same life.

Likewise Pope Nicholas, [to King Charles]. Queen Theutberga wrote to us that she wished to be divested of her dignity or marital union and desired to be content with a private life alone. We wrote to her that this could not be done otherwise unless her spouse Lothair chose the same life. § 1. For although it is written, "What God has joined let man not separate," nevertheless God, and not man, separates when marriages are dissolved by the consent of both spouses in contemplation of divine love. But we prohibit your mutual separation from being effected otherwise. GRATIAN. Behold, married persons cannot profess continence without the other's consent. But betrothed persons are proved by examples and authority to be able to observe continence even without consulting those whom they betrothed to themselves. For, as blessed Jerome relates, Macarius, foremost among Christ's hermits, after the wedding banquet had been celebrated, when in the evening he was about to enter the bridal chamber, departed from the city, sought lands across the sea, and chose for himself the solitude of the desert. § 1. Likewise blessed Alexius, son of the most distinguished Epiphanius, similarly called from his nuptials by divine grace, abandoned his betrothed and began to serve Christ naked. From their example it is apparent that betrothed men can profess continence without seeking the consent of their betrothed women. The same is proved by the authority of Pope Eusebius, who says:

C. XXVII. A betrothed girl is not prohibited from choosing a monastery.

It is not lawful for parents to hand a betrothed girl over to another man; nevertheless, it is lawful for her to choose a monastery for herself.

C. XXVIII. A betrothed woman can choose a monastery without penalty.

Likewise Gregory in the *Register*, [Book VI, epistle 20, to Fortunatus]. Legal decrees have judged that if a betrothed woman wishes to be converted, she is to be punished by no penalty whatsoever. GRATIAN. Therefore, since the continence of married persons cannot be offered to God except by the consent of both; since the man does not have power over his own body, but the woman does; but betrothed women can choose a monastery, and betrothed men can assume a resolve of a better life without seeking the consent of their betrothed women: it is apparent that there is no marriage between a betrothed man and a betrothed woman. § 1. Likewise, since according to Augustine that woman with whom it is shown that there was no sexual commingling does not pertain to matrimony; likewise, according to Leo, that woman in whom it is shown that there was no nuptial mystery does not pertain to matrimony: it appears that there is no marriage between a betrothed man and a betrothed woman. § 2. Likewise Pope Nicholas commanded concerning those who are blinded by enemies or mutilated in their members that their marriages are not to be dissolved on account of this infirmity. § 3. But concerning those who, because of frigidity, cannot render the marital debt to their wives, Pope Gregory established that each of them, with seven kinsmen acting as oath-helpers and with the most sacred relics touched, is to declare under oath that they had never become one flesh joined through commingling of the flesh. Then the woman will be able to contract a second marriage; but the man who is of a frigid nature is to remain without hope of marriage. Hence the same Gregory writes to Venerius, bishop of Cagliari, speaking thus:

C. XXIX. If a woman proves that she was never known by her husband, let her be separated.

Concerning what you asked me about those who are joined in matrimony and cannot consummate it: whether he may take another woman or she another man. Concerning them it is written: If a man and woman have joined themselves, and afterward the woman shall say concerning the man that he cannot have intercourse with her, if she can prove by a true judgment that it is true, let her take another. GRATIAN. Behold, inability to have intercourse, if it is found in anyone after carnal union, does not dissolve the marriage. But if it is detected before carnal union, it makes the woman free to take another man. Hence it appears that those persons were not spouses; otherwise it would not be lawful for them to withdraw from one another except for the cause of fornication, and persons withdrawing in this way must remain unmarried or be reconciled to one another. § 1. Likewise, if a betrothed woman were a spouse, after the death of her betrothed she would remain a widow. But if she were a widow, her husband could not ascend to sacred orders. For the husband of a widow, just as much as a bigamist, is prohibited from becoming a priest. But no one is prohibited from sacred orders because of union with such a woman. For, as Pope Pelagius says: "There is nothing, so far as this point is concerned, that opposes him from the canonical institutes." Therefore, it appears that these persons were not spouses. § 2. Likewise, if they were spouses, withdrawal from one another would be divorce—that is, marital separation. But Ambrose denies that their separation was divorce, saying concerning blessed Mary, whom Joseph had betrothed to himself and taken into his home: "Joseph never knew her. For if the just man had known her, he would never have permitted her to withdraw from him; nor would the Lord, who had commanded that a wife not withdraw from her husband except for the cause of fornication, have been an author of divorce by commending her to the disciple." Behold, Mary's commendation to John and her removal from Joseph is denied to have

been divorce because Joseph had not known her. Hence it appears that they were not spouses. But if blessed Mary, whom Joseph had betrothed to himself and taken into his home, is denied to have been a spouse, much less is that woman who was simply betrothed to be called a spouse.

C. XXX. One who defiles his wife's sister can have neither woman.

Likewise from the Council of Orléans. One who has slept with two sisters, one of whom had previously been his wife, is to have neither of them; nor are the adulterous persons themselves ever to be joined in marriage. GRATIAN. That is, it is not lawful for his own wife to render the marital debt to him, for he has made her unlawful to himself by knowing her sister. Nor, even after the wife's death, is it lawful for him or for the adulteress to be joined to anyone in marriage. Concerning a betrothed woman, however, the contrary is read in the Council of Tribur:

C. XXXI. Concerning one who slept with his brother's betrothed.

A certain man betrothed and endowed a wife but was unable to have intercourse with her; his brother secretly corrupted her and made her pregnant. It was decreed that, although she could not be married to her lawful husband, the brother nevertheless cannot have the woman betrothed to his brother; but let the adulterer and adulteress sustain the punishment of fornication, while lawful marriages are not denied to them.

C. XXXII. Let one who violates his son's betrothed, and the woman likewise, remain without hope of marriage.

Likewise from the same. If anyone shall have violated his son's betrothed and afterward his son shall have married her, let the father thereafter have no wife, nor the woman a husband. Let the son, who was ignorant of his father's crime, take another.

GRATIAN. If the woman whom the husband of her sister has known is perpetually prohibited from being joined in marriage, but this man who corrupted his brother's betrothed is permitted to contract matrimony after completing penance, it appears that she was not his brother's spouse. § 1. Likewise, a woman dismissed by her husband for the cause of fornication will either be reconciled to him or remain unmarried while he lives. But concerning a betrothed woman the contrary is found in Book I of the Capitularies, [c. 105, and Book VII, c. 183], in which it is read thus:

C. XXXIII. If a betrothed man is unwilling to receive an abducted woman, let it be lawful for her to marry another.

Let the abductor be punished by public penance. But if the betrothed man is unwilling to receive the abducted woman, and she did not consent to the same crime, let permission to marry another not be denied her.

C. XXXIV. Concerning the same woman.

Likewise from the Council of Toledo. It was established by the sacred assembly that if anyone abducts another's betrothed, let him be punished by public penance and remain without hope of marriage. And if she did not consent to the same crime, let permission to marry another not be denied her. But if after this they presume to join themselves, let both be anathematized until satisfaction. PART III. GRATIAN. Therefore, it appears that she was not a spouse, since while her betrothed lives she is not

denied permission to marry another. How, then, are betrothed women called spouses according to Ambrose and the other Fathers, while by all these arguments they are proved not to be spouses? But it is to be known that marriage is initiated by betrothal and perfected by commingling. Hence between a betrothed man and woman there is a marriage, but one initiated; between those carnally united there is a ratified marriage. Hence Ambrose:

C. XXXV. Marriage is initiated in betrothal.

When marriage is initiated, the name of marriage is assumed, not when the girl is known through union with the man. GRATIAN. Behold, marriage is initiated in betrothal, not perfected.

C. XXXVI. The commingling of those joined perfects matrimony.

Likewise Ambrose in the book [I] *On the Patriarchs*. In every matrimony a spiritual union is understood, which the bodily commingling of those joined confirms and perfects.

C. XXXVII. Matrimony is initiated by a betrothal agreement and perfected by commingling.

Likewise Jerome upon Obadiah. "Wherefore they will fornicate with your daughters, and your betrothed women will be adulteresses." It is to be noted that he says there will be fornication among daughters and adulteries in marriages, which are initiated by a betrothal agreement and perfected by the commingling of bodies.

C. XXXVIII. When a betrothed woman has been handed over and brought into use, she is rightly called a spouse.

Likewise Ambrose to Paternus, [epistle 66]. If anyone has use of a woman betrothed and handed over to him, it is called marriage. GRATIAN. Augustine shows in Book IV of the *Confessions*, [c. 3], why women are not handed over immediately after nuptial compacts, saying:

C. XXXIX. Why betrothed women are not handed over immediately after the compact.

It was established that women already pledged in betrothal are not handed over immediately, lest a husband regard as cheap what was given, for which as a betrothed man he sighed while it was delayed. GRATIAN. According to this distinction, that authority of Augustine is to be understood: "There is no doubt that a woman with whom it is shown that there was no sexual commingling does not pertain to matrimony." It is to be understood: to perfected matrimony, namely, such as possesses within itself the sacrament of Christ and the church. That statement of Pope Leo is likewise to be understood. § 1. But that statement of Augustine is objected: "Between Mary and Joseph there was a perfect marriage." But it is understood as perfect not from the office of marriage but from those things that accompany marriage, namely fidelity, offspring, and sacrament. All these things are proved by Augustine's authority to have existed between the parents of Christ. Therefore, all the things adduced concerning a marriage not to be separated are understood of a perfected marriage, which was initiated by the union of betrothal and consummated by the office of bodily commingling. But those things by which a separable marriage is shown are understood of an initiated marriage, which has not yet been perfected by its office. § 2. It can also be distinguished otherwise. Betrothed women are called spouses by the custom of Scripture in hope of future things, not by the effect of

present things. Hence Ambrose, when he had said, "When marriage is initiated," did not add, "then the reality or effect," but "then the name of marriage is assumed," showing that such persons possess the name of marriage, not its reality or effect. Likewise Augustine, when he spoke concerning the parents of the Lord, said: "They were spouses in mind, not in flesh, just as they were parents." From this it is given to be understood that just as Joseph was called the father of the Lord, not by the effect of generation but by the office and care of providing, so also he was called the spouse of his mother, not by the effect of marriage but by the provision of necessities and the affection of an indivisible mind. Hence Augustine says: "Do not fear to take Mary your wife"; he named her a wife because she was going to be one. Hence also Bede upon Leviticus: "If anyone shall have violated another's betrothed, etc." He called the betrothed woman a wife, not one who then was a wife but one who was going to be a wife. Hence also Jerome upon Matthew in the Gospel: "When she had been betrothed."

C. XL. By the custom of Scripture, betrothed women are called wives and betrothed men husbands.

"He begot Joseph, the husband of Mary." When you hear "husband," let no suspicion of nuptials enter you, but recall the custom of the Scriptures, that betrothed men are called husbands and betrothed women wives. And below: § 1. She was found by no one other than Joseph, who with nearly marital license knew all the affairs of his future wife. And below: § 2. "Joseph, son of David, etc." As we have already said above, betrothed women are called wives, as the book *Against Helvidius* teaches more fully.

C. XLI. Concerning the same matter. The same upon Genesis.

"Therefore Lot went out and spoke to his sons-in-law, who were going to receive his daughters." In what follows, Lot's daughters are said to have been virgins. And he himself said to the Sodomites: "Behold my two daughters, who have not known a man, etc." Yet now he is said to have had sons-in-law. But some persons think that the daughters who had husbands perished in Sodom and those who were virgins departed with their father. But the Hebrew truth has: "Lot went out and spoke to his betrothed sons-in-law," which appears more likely from what follows: "who were going to receive his daughters." GRATIAN. Hence it is given to be understood that Scripture calls betrothed men sons-in-law.

C. XLII. Mary is called a wife according to the custom of Scripture, although she was simply betrothed.

Likewise John Chrysostom upon the same Gospel. "Before they came together." He did not say, "before she was brought into the house of her betrothed." For antiquity observed this custom, that betrothed women were kept in the houses of their betrothed men. Just as Lot's sons-in-law are read to dwell with their father-in-law together with the women betrothed to them but not yet united to them by the law of marriage, so also Mary dwelt with her betrothed. And below: § 1. For he did not wish to expel her from the house, but to dismiss her. And below: § 2. "Do not fear to take Mary your wife." By this expression he likewise indicated a betrothed woman, just as Scripture also customarily calls those who are still betrothed sons-in-law. But what does "to take" mean? Certainly, to retain her at home. For he had already dismissed her in his mind. And below: § 3. For just as Christ afterward

commends her to the disciple himself, so also now the angel joins her to her betrothed, not in the solemn covenant of marriage but in the fellowship of a common dwelling.

C. XLIII. The Lord would not have commended his mother to the disciple if Joseph had known her.

The same in the same work, homily V, [on the same c. 1 of Matthew]. For if he had known her and held her in the place of a wife, how would the Lord commend her to the disciple as though she were without solace and had nothing at all, ordering him to receive her as his own?

C. XLIV. Mary is called Joseph's wife because he thought she was going to be so.

Likewise Origen upon the same, [homily I on the Gospel]. "She was found having a child in the womb." By blessed Joseph, who, although he did not touch her, nevertheless knew all the affairs of the woman who, as he thought, was to be his wife. And below: § 1. If she is named a wife to you, if she is said to be yours in betrothal, nevertheless she is not your wife, but is the eternal mother of God's Only-begotten. And below: § 2. I call her a wife for this reason: that I may conceal her virginity from the devil and not destroy the institutes of the law. In what follows I will demonstrate that neither is she regarded as your wife according to the custom of marriage nor is he who is begotten believed to be your son.

C. XLV. Joseph did not come to nuptials with Mary.

Likewise Gregory in the exposition of the Gospel, "When it was evening on that day," [homily 26]. For thus he permitted the disciple to doubt after his resurrection, yet did not abandon him in doubt, just as before his nativity he wished Mary to have a betrothed man who nevertheless did not come to nuptials with her. For the doubting and touching disciple was thus made a witness of the true resurrection, just as the mother's betrothed had been guardian of her wholly intact virginity. GRATIAN. From all these things it appears that betrothed women are called spouses in hope of future things, not by the reality of present things. How, therefore, are spouses called such from the first pledge of betrothal if this woman, who is asserted to have been betrothed, is denied to have been a spouse? But she is said to be called a spouse from the first pledge of betrothal, not because she becomes a spouse in the betrothal itself, but because from the pledge that they owe to one another through betrothal they afterward become spouses, just as sins are said to be remitted through faith—not because they are remitted through faith before baptism, but because faith is the cause why we are cleansed from sins in baptism. § 1. Moreover, that statement of John Chrysostom, "Intercourse does not make matrimony, but the will," and likewise that statement of Ambrose, "Not the deflowering of virginity but a marital compact makes matrimony," are to be understood thus: intercourse without the will to contract matrimony and the deflowering of virginity without a marital compact do not make matrimony; rather, the preceding will to contract matrimony and the marital compact cause the woman, in the deflowering of her virginity or in intercourse, to be said to marry the man or to celebrate nuptials. § 2. Likewise Pope Siricius calls the departure of a betrothed woman from her betrothed a marital separation. But such a departure is called a violation not of a marriage already existing but of a future marriage, as it was hoped for from the betrothal itself. So also the devil is said to have fallen from blessedness, not only that which he then possessed but also that which he was created to possess. So one who by the merit of his life or learning is elected as a priest or bishop, if

meanwhile he shall have deserved to have his election annulled, is said to lose sacerdotal or episcopal anointing—not one he had already received but one to receive which he had been elected. Therefore, by that authority a betrothed woman cannot be proved to be a spouse. § 3. But let it be conceded that a betrothed woman is not a spouse; nevertheless, it is asked whether it is lawful for her to renounce the prior agreement. This is prohibited by the authority of the Council of Ancyra, [c. 11], in which the statute is read thus:

C. XLVI. Betrothed girls are to be restored to their former betrothed men if they have been abducted from them.

It was resolved that girls who were betrothed and afterward abducted by others are to be rescued and restored to those to whom they had previously been betrothed, even if it is established that violence was inflicted upon them by their abductors.

C. XLVII. Let a betrothed woman be deprived of communion unless she is willing to leave her abductor and return to her betrothed.

Likewise John VIII to Archbishop Rostagnus. Atto, bearer of the present writings, complains that while he kept watch faithfully in our service, a certain man abducted the woman betrothed to him. Therefore, supported by our authority, let Your Fraternity summon its suffragan bishops to appear in person and thus, by a unanimous sentence, if the abductor does not restore the betrothed woman to him, let both that man and the abducted woman—if she is unwilling to return to her former betrothed—be deprived of all communion. PART IV. GRATIAN. But it is one thing to renounce the prior agreement and arrange nuptials with another; it is another to be abducted, that is, unlawfully violated. Hence Isidore says in Book V of the *Etymologies*, c. 24:

C. XLVIII. What is *raptus*?

Raptus is unlawful intercourse, named from corruption; hence one who obtains another by *raptus* enjoys defilement. GRATIAN. This woman, however, is shown not to have been abducted by another but to have been betrothed to another. Pope Gelasius prohibits such a woman from being called abducted, speaking thus:

C. XLIX. *Raptus* is admitted where a girl is abducted concerning whose nuptials it is proved that nothing was previously arranged.

That law of former rulers said that *raptus* was committed where a girl concerning whose nuptials nothing had previously been arranged is seen to have been abducted. PART V. GRATIAN. What is appended at the end of the chapter—"even if it is established that violence was inflicted upon them by their abductors"—was added for this reason: some abducted women expose themselves to be abducted, while others are violently carried away. Therefore, in whatever manner they are abducted, they are to be restored to their former betrothed men. But this woman, as was said above, is numbered not among abducted women but among other betrothed women, and therefore she is not to be taken away from this man and restored to the former man. § 1. Other authorities follow, by which this woman is prohibited from marrying the second man and ordered to return to her former vows. For Pope Siricius says to Himerius, bishop of Tarragona, [epistle I, c. 4]:

C. L. Another cannot take a girl betrothed to someone else.

You asked concerning a violation of marriage whether another man can take in matrimony a girl betrothed to someone else. Therefore, we anathematize such a union and prohibit by every means that it occur, because among the faithful that blessing which the priest imposes upon a woman about to marry is comparable to a certain sacrilege if it is violated by any transgression. GRATIAN. But by this authority of Siricius, the woman prohibited from passing to second vows is one who has been brought into her own household and has been veiled and blessed together with her betrothed. By the departure of such persons, the blessing that the priest imposes upon a woman about to marry is violated. But this betrothed man had not yet brought this woman into his home, nor had he received the blessing with her. Therefore, their union is not prohibited by this authority.

§ 1. Likewise, that statement of Pope Eusebius, "It is not lawful for parents to hand a betrothed girl over to another man," is similarly understood of a betrothed woman of this kind—namely, one who has been veiled and blessed together with her betrothed. § 2. Likewise, that statement of Gregory is objected: "A woman who was separated from her husband because of frigidity and married to another, if her husband has known another woman, is to be taken from the second and restored to the first." But it is resolved in the same way: namely, because this woman had received the blessing with that man.

[PALEA.

C. LI. If anyone has given a pledge of consent to a woman, it is not lawful for him to marry another.

Augustine, *On the Pledge of Compact and Consent*. A pledge is spoken of in two ways: of compact and of consent. If anyone has given a woman a pledge of compact, he ought not to marry another. If he marries another, he ought to do penance for the falsified pledge; nevertheless, let him remain with the woman whom he married. For so great a sacrament ought not to be severed. But if he has given a pledge of consent, it is not lawful for him to marry another. If, however, he has married another, he is to dismiss her and cleave to the former woman. "A pledge of compact exists when someone promises a woman his pledge that he will marry her if she permits him to have intercourse with her, or even in place of consent. But a pledge of consent exists when, even if he does not clasp her hand, he nevertheless consents in heart and mouth to marry her, and they mutually grant themselves to one another and mutually receive one another."]

Causa XXVIII

GRATIAN. A certain unbeliever, placed in marriage, was converted to the faith, but his wife departed from him out of hatred for the Christian faith. He took a certain faithful woman as his wife, and after her death he became a cleric. At length, by the merit of his life and learning, he is elected as a bishop. (Question I.) Here it is first asked whether marriage exists between unbelievers. (Question II.) Second, whether it is lawful for this man to marry another while the first is living. (Question III.) Third, whether one who had one wife before baptism and another after baptism is to be regarded as a bigamist.

Question I

GRATIAN. PART I. That marriage does not exist between unbelievers is proved by many authorities. For Paul says: "Everything that is not from faith is sin." But the union of unbelievers is not from faith and therefore is sin. It is not, therefore, marriage, because no marriage is sin. Likewise Augustine: "There is no true chastity of an unbelieving man with his spouse." But where true chastity cannot exist, neither is there true marriage. Likewise Ambrose: "Ezra ordered foreign wives to be dismissed, through whom they went to foreign gods. For what was done outside God's decree is not to be thought matrimony. But when it is recognized, it is to be corrected." Likewise Augustine: "A marriage that is without God is not ratified." By all these authorities it is proved that marriage does not exist between unbelievers. § 1. On the contrary, other authorities are found by which it is proved that marriage exists between unbelievers. The first of these is that statement of the Gospel in which Christ says: "There will be five in one house; two will be divided against three and three against two." Then, when he enumerated those persons, he said that a wife would be divided against her husband and conversely. Likewise: "One who does not hate father, or mother, or sister, or wife, for my sake is not worthy of me"; he says that an unbelieving wife, not a believing one, is to be held in hatred. Likewise: "Everyone who leaves house, or father, or mother, or sister, or wife, will receive a hundredfold, etc." In this place he signifies an unbelieving wife, who is dismissed for Christ when she, rather than faith in Christ, is abandoned. Likewise the Apostle: "If any brother has an unbelieving wife and she consents to dwell with him, let him not dismiss her; and if any woman has an unbelieving husband and he consents to dwell with her, let her not dismiss her husband. For the unbelieving husband has been sanctified through the believing woman, and the unbelieving woman has been sanctified through the believing husband." Likewise to Titus: "Exhort the young women to love their husbands." This is to be understood concerning believers as well as unbelievers. For believing women ought to obey unbelieving husbands more earnestly for God's sake, so that they may thus be able to win their husbands for Christ, as is read to have occurred wondrously concerning Theodora and Sisinnius in the Passion of blessed Clement.

C. I. Those who had one wife before baptism and another after baptism are proved to be bigamists.

Likewise Pope Innocent to Rufus and Eusebius, bishops in Macedonia, [epistle 22, c. 2]. Are those who were begotten of the woman who was a wife before baptism not to be admitted to a share in the inheritance? And will they be called natural children because—as it seems to you—there is no lawful matrimony except that which is assumed after baptism? When the Lord himself was asked by the Jews whether it was lawful to dismiss a wife and explained that it ought not to be done, he added: "What God has joined, let man not separate." And lest he be thought to have spoken concerning those who take wives after baptism, let them remember that this was both asked by Jews and answered to Jews. I ask, and anxiously ask: if the wife of one who was first a catechumen and afterward becomes faithful is one and the same, and he begot children from her when he was a catechumen and afterward other children when he was faithful, are they to be called brothers? Or, after the father has died, do they not possess with the others a share in dividing the inheritance because spiritual regeneration is said to have taken the name of children away from them? Since it is absurd to judge and think thus, what reason is there for this evil to be defended and vaunted more by

empty opinion than strengthened by any authority, when that which the law commands and God has joined cannot be counted among sins?

C. II. Let it be in the believer's power after baptism to receive the wife whom he had previously dismissed.

Likewise from a decree of Pope Eutychian. PART II. If any gentile shall have dismissed a gentile wife before baptism, after baptism it will be in his power to have her or not to have her.

C. III. A believer is not compelled to follow an unbeliever who departs.

The same. In like manner, if one of the married persons is baptized and the other is a gentile and does not wish to follow, as the Apostle says, if the unbeliever departs, let that person depart.

C. IV. A wife who is unwilling to dwell with a believer is left without fault.

Likewise Augustine, *On Faith and Works*, [c. 16]. A wife joined in a lawful partnership is left without any fault if she is unwilling to remain with a Christian husband. Nor is it considered that she is most rightly dismissed in the same way if she says to her husband: "I will not be your wife unless you amass riches for me by robbery, or unless, even as a Christian, you practice the customary acts of procuring by which you maintained our household," or if she knew anything else criminal or disgraceful in the man, by which, delighted, she either fulfilled her lust, possessed an easy livelihood, or even went about more adorned. For then the man to whom his wife has said these things, if he truly performed penance from dead works when he approached baptism and possesses in the foundation faith that works through love, will without doubt be held more by love of divine grace than by the lust of the flesh and will resolutely cut off the member that scandalizes him.

C. V. A wife who seeks to compel her husband to evil is lawfully dismissed.

The same in *The Lord's Sermon on the Mount*, Book I, [cc. 27 and 28]. Idolatry, which unbelievers follow, and every harmful superstition are fornication. But the Lord permitted a wife to be dismissed for the cause of fornication. Yet because he permitted and did not command it, he gave the Apostle occasion to admonish that one who wishes should not dismiss an unbelieving wife, so that in this way perhaps she can become faithful. Likewise, [c. 28]. § 1. If unbelief is fornication, idolatry unbelief, and avarice idolatry, there is no doubt that avarice is also fornication. Who, then, can now rightly separate any unlawful concupiscence from the genus of fornication if avarice is fornication? From this it is understood that because of unlawful concupiscences—not only those committed in debaucheries with other men or women, but altogether any that cause the soul, using the body badly, to stray from the law of God and to be perniciously and shamefully corrupted—a husband can dismiss his wife and a wife her husband without crime. For the Lord makes the cause of fornication an exception, which fornication, as was considered above, we are compelled to understand generally and universally. But when he says, "Except for the cause of fornication," he does not say whose, whether the man's or the woman's. For permission is granted not only to dismiss a wife who fornicates; rather, whoever also dismisses a wife by whom he himself is compelled to fornicate dismisses her for the cause of fornication—for example, if a wife compels someone to sacrifice to idols. One who dismisses such a woman dismisses her for the cause of fornication, not only hers but also his own: hers, because she fornicates; his own, lest he fornicate.

C. VI. Let a woman who makes an idol and does not return to wisdom be dismissed by her husband.

The same, *On Adulterous Marriages*, Book II. Adultery is committed not only by a woman who defiles her flesh, but a woman who makes an idol also commits adultery. But if she perseveres in these deeds and does not perform penance, withdraw from her and do not live with her. Otherwise you too will be a participant in her sin.

C. VII. One must not depart from the faith for the love of anyone.

Likewise Ambrose to Hilary. "If the unbeliever," says the Apostle, "departs, let that person depart; a brother or sister is not subject to servitude in such a case"—that is, if the unbeliever is unwilling to be with a believing spouse, let the believer recognize his or her freedom, lest that person suppose himself or herself subject to servitude in such a way as to dismiss the faith itself in order not to lose an unbelieving spouse. This is also understood concerning children and parents, and concerning brothers and sisters: they are to be dismissed for Christ when this condition is imposed, that one must dismiss Christ if one desires to have that person with oneself. This is therefore also to be understood concerning a house and fields and the other things possessed by proprietary right.

C. VIII. That unbelievers are spouses, and that it is lawful for a believer to put away an unbeliever.

Likewise Augustine to Pollentius, [Book I, *On Adulterous Marriages*, cc. 13 and 14]. PART III. Let us now consider what the Apostle says:

"But to the rest I say, not the Lord"—namely, when he was about to speak of unequal marriages, in which both had not been Christians. It seemed to me that he said this by way of admonition. For because a believing spouse can lawfully leave an unbelieving spouse, the Lord does not prohibit this from being done, but the Apostle does. What the Lord prohibits absolutely may not be done. The Apostle therefore admonishes that which can be an occasion for winning many: that believing spouses should not use the permission granted them to leave unbelievers. But it seems to you that unbelievers also may not be put away by believers, because the Apostle forbids this, whereas I say that it is lawful, because the Lord does not forbid it; nevertheless, it is not expedient, because the Apostle admonishes that it not be done, and he also gives the reason why it is not expedient to do it, although it is lawful. "For how do you know, woman," he says, "whether you will save your husband? Or how do you know, husband, whether you will save your wife?" since he had also said above: "The unbelieving husband is sanctified in the believing woman, and the unbelieving woman is sanctified in the brother" (that is, in the Christian). "Otherwise your children would be unclean; but now they are holy." Thus, even by examples that had already occurred, he seems to have exhorted them to win spouses and children for Christ. The reason why it is not expedient for unbelieving spouses to be put away by believers is therefore clearly expressed. For the Apostle forbids departure from unbelieving spouses, not because the marital bond with such persons must be preserved, but so that they may be sought in Christ. Many things, moreover, are to be done not because the law commands them, but from free charity; and those things among our duties are more pleasing which, although it would be lawful for us not to expend them, we nevertheless expend for the sake of love. Hence the Lord himself first, although he had shown that he did not owe the tribute, nevertheless paid it, lest he scandalize those whom he was accommodating while consulting their eternal salvation. Indeed, how

the Apostle commends these things is attested by his words where he says: "Although I am free from all, I made myself the servant of all, that I might gain the more," when a little above he had said: "Do we not have the right to eat and drink? Do we not have the right to take about a sister, a woman, as do the other Apostles, and the brothers of the Lord, and Cephas? Or do only I and Barnabas not have the power to do this work? Who ever serves as a soldier at his own expense? Who plants a vineyard and does not eat of its fruit? Who tends a flock and does not eat of the milk of the flock?" And a little afterward he says: "If others share by right in this authority over you, do not we more so? But we have not used this authority; rather, we endure all things, lest we place any impediment in the way of the gospel of Christ."

C. IX. It is lawful to depart from unbelieving spouses, but it is not expedient.

Likewise, [in the same work, c. 18 and the following chapters]. For in this way believing men or women are neither forbidden by the Lord to depart from unbelieving wives or husbands, nor are they commanded to do so. For if they were commanded to put away such spouses, there would be no place for the counsel of the Apostle admonishing that this not be done. For in no way does the servant of the Lord forbid what the Lord commands.

Likewise: Therefore, when the gospel began to be preached to the gentiles, it found gentiles joined to gentile spouses. If, of these, both did not believe, but one man or one woman did, and the unbeliever consented to dwell with the believer, the believer ought neither to have been forbidden by the Lord to put away the unbeliever nor commanded to do so. He ought not to have been forbidden, namely, because justice permits departure from a fornicator, and the fornication of an unbelieving person is greater in the heart; nor can his chastity with his spouse indeed be called true, because everything that is not of faith is sin, although the believer has true chastity even with an unbelieving spouse, who does not have true chastity. Yet believers ought not to have been commanded to separate from unbelievers, because the two gentiles had not been joined contrary to the Lord's command.

§ 1. Since, therefore, the Lord neither forbids nor commands a believer to depart from an unbeliever, the Apostle—not the Lord—says that the believer should not depart, having, certainly, the Holy Spirit, in whom he could give useful and faithful counsel. Hence, after he had said concerning a woman whose husband had died, "But she will be happier if she remains thus, according to my counsel," lest anyone think that this counsel, as human and not divine, was to be despised, he added: "But I think that I too have the Spirit of God." Accordingly, it must be understood that even those things which are not commanded by the Lord but are usefully advised by his holy servant are advised by the inspiration of the same Lord. For far be it from any Catholic to say that what the Holy Spirit advises is not advised by the Lord, since the Holy Spirit himself is Lord and the works of the Trinity are inseparable. Yet the Apostle says: "Concerning virgins, however, I have no command of the Lord, but I give counsel," not so that we might suppose this counsel to be foreign to the Lord, since he immediately continues and says, "as one who has obtained mercy from the Lord to be faithful." Therefore he gives faithful counsel according to God, in the same Spirit concerning whom he says, "But I think that I too have the Spirit of God."

§ 2. Nevertheless, the command of the Lord who orders is one thing; the faithful counsel of a servant, according to the mercy of charity inspired and given to him by the Lord, is another. For in the former

it is not lawful to do otherwise; in the latter it is lawful, yet in such a way that what is lawful is in part expedient, but in part not expedient. It is expedient when it is not only permitted on account of the justice that exists before God, but also causes no impediment to the salvation of human beings. For example, when the Apostle gives virgins counsel not to marry—concerning which he testifies that he has no command of the Lord—it is lawful to do otherwise, that is, to marry and to maintain the lesser good of continence in marriage; and this lawful thing is also expedient, since the honorable state of marriage has thus received the weakness of the flesh, which would otherwise rush into forbidden and unlawful acts, so that it impedes no one from salvation, although it would be more expedient and more honorable if the virgin embraced the counsel to which no command compels her. But what is lawful is not expedient when it is indeed permitted, but the exercise of that power brings others an impediment to salvation. Such is the departure—which we have now long been discussing—of a believing spouse from an unbeliever. The Lord does not forbid it by a command of law, because it is not unjust before him; but the Apostle forbids it by the counsel of charity, because it brings unbelievers an impediment to salvation, not only because, being offended, they are most ruinously scandalized, but also because, when they have fallen into other marriages while those by whom they are put away are living, they are bound by adulterous bonds and are released with difficulty.

§ 3. Therefore here, where what is lawful is not expedient, it cannot be said: if one puts away an unbeliever, one does well; if one does not put the unbeliever away, one does better—as was said: "He who gives her in marriage does well, and he who does not give her in marriage does better." For there, not only one but both are equally lawful—whence no one is compelled to either by a command of the Lord—and both are expedient, the one less and the other more. Hence whoever is able to receive it is called by the Apostle's counsel to that which is more expedient. But here, where the question concerns putting away or not putting away an unbeliever in marriage with a believer, both are indeed equally lawful by the justice that exists before the Lord, and therefore the Lord forbids neither; but both are not expedient because of human weakness, and therefore the Apostle forbids that which is not expedient, the Lord giving him a free place for forbidding it, because the Lord neither forbids what the Apostle admonishes nor commands what the Apostle forbids. Unless it were so, the Apostle would neither admonish anything contrary to the Lord's prohibition nor forbid anything contrary to his command.

§ 4. Accordingly, in these two cases—the one concerning marrying or not marrying, the other concerning putting away or not putting away an unbelieving spouse—something in the Apostle's words is similar and something dissimilar. This is similar: there he says, "I have no command of the Lord, but I give counsel," and here he says, "I say, not the Lord." For "I have no command of the Lord" is like "the Lord does not say," and "I give counsel" is like "I say." But this is dissimilar: concerning marrying or not marrying it can be said that this can be done well, but that better, since both are expedient, one less and the other more. But concerning putting away or not putting away an unbelieving spouse, since one of these is not expedient and the other is expedient, it ought not to be said, "He who puts the spouse away does well, and he who does not put the spouse away does better"; rather, it ought to be said, "Let him not put the spouse away," because, namely, it is not expedient. Thus, therefore, we can say that it is better not to put away an unbelieving spouse, although it is also lawful to put the spouse away, just as we rightly say that what is lawful and expedient is better than what is lawful and not expedient.

§ 5. For these reasons it happened that, when expounding the Lord's lengthy discourse on the mountain, once the question of putting away or not putting away spouses was reached, I employed from the Apostle—not a command of the Lord—the passage in which he says, "But to the rest I say, not the Lord," admonishing those who have unbelieving spouses not to put them away if they consent to dwell with them. This certainly had to be admonished, not commanded, because human beings are not prohibited with so great a weight from doing lawful things, although they are not expedient, as unlawful things must be prohibited. But if the Apostle somewhere deigns to admonish even those things that must be commanded, he does this by sparing weakness, not by prejudicing the command. Hence he said thus: "I write these things not to confound you, but to admonish you as my dearest children." What question is there where he says, "I say, not the Lord"? Likewise, where he says, "Behold, I Paul say to you that if you be circumcised, Christ will profit you nothing"? Did he also say here, "Behold, I say, not the Lord"? These things, therefore, are not similar, because even as to those things that the Lord commands, it is neither unworthy nor contrary if the Apostle also admonishes them. For we admonish those whom we hold dear to perform the Lord's precepts or commands. But when he says, "I say, not the Lord," he sufficiently shows that the Lord does not forbid what he himself was forbidding. But the Lord would have forbidden it if it were unlawful. Therefore, according to the matters we discussed above and treated at length, it was lawful by justice; but even what was lawful was not to be done because of free benevolence.

§ 6. But you, to whom it seems that what the Lord does not forbid, but the Apostle does, is no more lawful than what the Lord forbids—when you wished to explain what he meant when he said, "I say, not the Lord," as he addressed believers who had unbelieving spouses—you said that the Lord commanded that marriages of differing religion not be joined to one another. And you employed the very testimony of the Lord saying: "You shall not take a wife for your son from the daughters of foreigners, lest she draw him after her gods and his soul perish." You also added the words of the Apostle where he says: "A woman is bound for as long as her husband lives; but if her husband has died, she is free; let her marry whom she wishes, only in the Lord." You explained this by adding: that is, a Christian. Then you continued and added: This, therefore, is the Lord's command both in the Old Testament and in the New; this the Lord commands, this the Apostle teaches: that only marriages of the same religion and faith should remain joined. Why, contrary to the Lord's command, contrary to holy teaching, contrary to the precept of the Old and New Testament, does the Apostle command that marriages of differing faith remain joined?

Because Paul, he says, the preacher and apostle of the gentiles, not only admonishes but even commands those already placed in marriage that, if one of the spouses should believe, that person should not put away the other, who does not believe but nevertheless consents to dwell together. By these words of yours you show sufficiently clearly that this is one thing and that another. For there the matter concerns marriages that have not been joined in the first place: that a woman marry only a man of her religion, or that a man take such a woman as wife; for this, as you say, the Lord commands, the Apostle teaches, and both Testaments prescribe. But who would deny that this is different, since here the matter concerns not persons to be joined but persons already joined? For both were of one and the same unbelief when they were joined; but when the gospel came, either the one without the other, or the other without the one, believed. Therefore, if this is another matter—as appears without any scruple of doubt—why is it not lawful for a believer to remain with an unbelieving spouse? Does not the Lord also command it, just as the Apostle does? Unless perhaps in

this place that which the Apostle so faithfully says is void: "Do you seek proof of the Christ who speaks in me?" And Christ is certainly the Lord.

§ 7. Do you understand what I am saying? Or shall I linger somewhat more carefully in explaining this? Pay attention, so that we may set forth the matter itself to be explained, as though it were to be made clear before our eyes, in plainer speech. Behold, when two spouses were joined, they were both of one unbelief. There is no question about them that pertains to that command of the Lord, the apostolic teaching, and the precept of the Old and New Testament by which a believer is forbidden to join in marriage with an unbeliever. They are already spouses, and both are still unbelievers; they are still such as they were before they were joined and such as they were when joined. Then the preacher of the gospel comes, and either the man or the woman believes, but in such a way that the unbeliever consents to dwell with the believer. Does the Lord command the believer to put away the unbeliever, or does he not command it? If you say, "He commands it," the Apostle cries out against you: "I say, not the Lord." If you say, "He does not command it," I ask the reason. Nor will you answer me with the reason you inserted into your writings, namely that the Lord forbids believers to be joined to unbelievers. For that reason has no place here at all: we are speaking of those already joined, not of those to be joined. Therefore, if you have not found your reason why the Lord does not forbid what the Apostle forbids, you now perceive, I suppose, that it is not the reason you had thought it was.

PART IV. GRATIAN. To the contrary, it is found in the Fourth Council of Toledo, [c. 62]:

C. X. Unless a Jew comes to the faith, let him be separated from his believing wife.

Jews who have Christian women in marriage are to be admonished by the bishop of that city that, if they desire to remain with them, they should become Christians. But if, after being admonished, they are unwilling, let them be separated, because an unbeliever cannot remain in union with one who has now been transferred to the Christian faith. Moreover, the children born from such persons are to follow the faith and condition of the mother. Likewise, those who have been begotten of unbelieving women and believing men are to follow the Christian religion, not Jewish superstition.

GRATIAN. But this was established for this reason: lest, while the believer seeks the salvation of the unbeliever, the believer rather find with the unbeliever the perdition of unbelief. Hence in the same Council, [c. 59], it was established both concerning the children of Jews and concerning others coming to the faith that they should avoid the company of unbelievers:

C. XI. Let believers be separated from the company of their parents, lest they be entangled in their errors.

We decree that the sons or daughters of Jews, lest they be further entangled in the errors of their parents, be separated from their company and assigned either to monasteries or to God-fearing Christian women and men, so that under their manner of life they may learn the worship of the faith and, being better instructed, may advance both in morals and in faith.

C. XII. Let Jews coming to the faith have no communion with unbelievers.

Likewise, [in the same Council, c. 61]. The company of evil persons often corrupts even the good; how much more those who are prone to vices? Therefore, let Hebrews transferred to the Christian faith henceforth have no communion with those who still remain in the old rite, lest perhaps they be

subverted by participation with them. Therefore, henceforth, whoever among those who have been baptized do not avoid the company of unbelievers, let the former be handed over to Christians and the latter assigned to public beatings.

C. XIII. One is neither to eat nor dwell with Jews, nor to receive medicine from them.

Likewise from the Sixth Synod, [c. 11]. Let no one among those who are in sacred orders, nor any layperson, eat their unleavened bread, or dwell with them, or call any one of them in his illnesses, or receive medicine from them, or bathe with them in a bathhouse. But if anyone does this, if he is a cleric, let him be deposed; but if a layperson, let him be excommunicated.

C. XIV. Let clerics and laypersons avoid the banquets of Jews, and let them not receive Jews into their own company.

Likewise from the Council of Agde, [c. 40]. Henceforth let all clerics and laypersons avoid the banquets of Jews, nor let anyone receive them at a banquet, because, since they do not use foods in common with Christians, it is unworthy and sacrilegious for their foods to be taken by Christians, since those things which, with the Apostle's permission, we take are judged unclean by them. Thus Christians will begin to be inferior to Jews if we use the things set before us by them, while they despise those offered by us.

PART V. GRATIAN. From these things, therefore, it is clearly gathered that marriage exists between unbelievers. But that saying of the Apostle, "Whatever is not of faith is sin," is not to be understood so that whatever is done by unbelievers is believed to be sin, but rather that everything done against conscience builds toward hell. Hence Ambrose: "It is sin when something is done otherwise than has been approved."

§ 1. Likewise Augustine on the same passage: "Everything done otherwise than is approved is sin; nevertheless, not everything done with faith is good. For ignorance that proceeds from fault is harmful." Hence the Apostle also says: "Blessed is he who does not judge himself in that which he approves," that is, he who does not render himself condemnable by doing otherwise than he approves ought to be done. Or everything that is not of faith is said to be sin, because whatever is not done with that faith by which it may avail toward eternal salvation is reckoned useless before the Lord. Hence Augustine says: "The whole life of unbelievers is sin, nor can that which is done without God be good. For where there is no recognition of eternal and immutable truth, virtue is false even in the best morals."

§ 2. Likewise, when it is said, "There is no true chastity of an unbelieving person with his spouse," chastity is denied to be true with respect to its effect, namely the reward of eternal salvation. For just as sacraments among heretics are denied to be true, not with respect to form but with respect to power, so also virtues among unbelievers are denied to be true—not because they are not true in them, according to Jerome's saying, "By virtues the Romans merited empire"—but because they lack the effect of eternal salvation.

§ 3. Likewise, that saying of Ambrose, "A marriage made outside God's decree is not to be acknowledged; but when it is recognized, it is to be corrected," does not show that marriage does not exist between unbelievers. For by no command of the Lord are gentiles forbidden to be joined to

gentiles. Their marriage, therefore, is not made outside—that is, contrary to—God's decree. Accordingly, by that authority those are commanded to be separated from one another who have been joined contrary to the decree of God or of the Church, such as unbelievers with believers, blood relatives with blood relatives, or relations by marriage with relations by marriage. All these, if they have been joined to one another, are to be separated. Hence also the same Ambrose in the book *On the Patriarchs*, [Book I, *On Abraham*, c. 9]:

C. XV. Believers are not to be joined in marriage to unbelievers.

Beware, Christian, of giving your daughter to a gentile or a Jew. Beware, he says, of seeking for yourself as a wife a gentile woman, a Jewish woman, or a foreign woman—that is, a heretic—and every woman foreign to your faith. The first fidelity of marriage is the grace of chastity.

§ 1. If she is Christian, that is not enough unless both of you have been initiated by the sacrament of baptism. Together you must rise at night for prayer and beseech God with joined prayers.

C. XVI. Let Catholics not mingle in marriages with heretics.

Likewise from the Council of Agde, [c. 67]. It is not fitting to mingle in marriages with all heretics and to give either sons or daughters to them; rather, they are to be received, provided that they profess that they will become Christians and Catholics.

C. XVII. Let one who associates himself with Jewish depravity by a marital bond be deprived of Christian communion.

Likewise from the Council of Clermont. If anyone is joined to Jewish depravity by marital association —whether a Christian woman is mingled in carnal company with a Jew, or a Jewish woman with a Christian—whichever of them is known to have committed so great a wickedness, let that person immediately be separated from the Christian assembly and banquet and from the communion of the Church.

GRATIAN. Likewise, that saying of Augustine, "A marriage that is without God is not ratified," does not deny that marriage exists between unbelievers. For one marriage is legitimate and not ratified; another is ratified and not legitimate; another is legitimate and ratified. A legitimate marriage is one contracted by legal institution or by the customs of the province. Between unbelievers this is not ratified, because their marriage is not firm and inviolable. For once a bill of repudiation has been given, it is lawful for them to depart from one another and to be joined to others according to the law of the forum, not the law of heaven, which they do not follow. But between believers marriage is ratified, because marriages once entered between them cannot thereafter be dissolved. Some of these are legitimate, as when a wife is handed over by her parents, endowed by the bridegroom, and blessed by a priest. Such marriages are called legitimate and ratified. But the marriages of those who, with all those solemnities disregarded, join some woman to themselves as wife by affection alone are believed to be not legitimate but only ratified.

Question II

GRATIAN. That one cannot take another wife while his wife is living is attested by Scripture, saying: "Otherwise, if you depart from one another, and, though willing to dwell together, put one another

away, and join yourselves to others, you will be adulterers, and your children who are afterward born will be unclean, that is, illegitimate."

C. I. After baptism one cannot take another wife while the one who was joined to him as a virgin before baptism is living.

Likewise from the Council of Meaux, [c. 1]. If anyone had a virgin wife before baptism, while she is living he cannot have another after baptism. For crimes are dissolved in baptism, not marriages. But Gregory testifies to the contrary, saying:

C. II. It is lawful for a believer to take another wife when an unbelieving wife puts him away out of hatred for the Christian faith.

"If the unbeliever departs out of hatred for the Christian faith, let the unbeliever depart. For a brother or sister is not subjected to servitude in such cases." For it is no sin, when one has been put away for God's sake, if one is joined to another. Indeed, contempt of the Creator dissolves the right of marriage with respect to the one who is abandoned. But the unbeliever who departs sins both against God and against marriage; nor is the fidelity of marriage to be preserved for one who departed for this reason, lest that person hear that Christ is the God of Christian marriages.

GRATIAN. A distinction must be made here: it is one thing to put away one who is willing to dwell together, and another not to follow one who departs. It is indeed lawful to put away one willing to dwell together, but not to bring in another while that person is living; but one ought not to follow one who departs, and it is lawful to take another while that person is living. Yet this is to be understood only of those who were joined to one another in unbelief. But if both were converted to the faith, or if both were believers when joined in marriage, and in the course of time one of them departed from the faith and abandoned the spouse out of hatred for the faith, the abandoned spouse will not accompany the one departing; nevertheless, the abandoned spouse will not be able to take another while the other is living, because there had been a ratified marriage between them, which can in no way be dissolved.

Question III

GRATIAN. Whether one who had one wife before baptism and another after baptism is to be reckoned twice-married is evident from the authority of Jerome. For he says on Paul's epistle to Timothy:

C. I. One who had one wife before baptism and another after baptism is not twice-married.

A bishop must be the husband of one wife. But this means after baptism. Yet if he had one wife before baptism and another after baptism, he is not to be reckoned twice-married, since, after being entirely made new through baptism, all old things have been forgiven him. Augustine, however, and Innocent testify to the contrary. For Augustine says on Paul's epistle to Titus:

C. II. One who had one wife before baptism and another after baptism ought not to be made a bishop.

They understand more acutely who have judged that not even one who had one wife before baptism and another after baptism is to be ordained. For in baptism crimes are abolished; the bond of marriage is not dissolved. Just as a woman who was violated while a catechumen cannot be consecrated among God's virgins, so also one who had one wife before baptism and another after baptism is to be reckoned none other than twice-married. For he has lost something, not as to the merit of life, but as to the sacrament of the sign.

GRATIAN. Likewise Innocent, writing to Bishops Rufus and Eusebius of Macedonia, proves by many arguments that such a man is to be reckoned twice-married. Therefore, because this man whose case is presently at issue had one wife before baptism and another after baptism, he is judged twice-married; and although he excels in merit of life and skill in knowledge, nevertheless he cannot be ordained as a bishop.

Causa XXIX

CASE XXIX.

GRATIAN. It was announced to a certain noblewoman that she was being sought as wife by the son of a certain nobleman; she gave her assent. But another man of ignoble and servile condition presented himself under that man's name and took her as wife. The man who had first found favor with her finally came and sought her as wife for himself. She complains that she was deceived and aspires to union with the former man. (Q. I.) Here it is asked first whether there is a marriage between them. (Q. II.) Second, if she had first thought this man to be free and afterward discovered that he was a slave, whether she may depart from him immediately.

Question I

GRATIAN. That there is a marriage between them is proved in this manner. Wedlock or marriage is the union of a man and a woman maintaining an indivisible manner of life. Likewise, the consent of both makes marriage. Therefore, because these two were joined so as to preserve an indivisible manner of life, and because each consented to the other, they are to be called spouses.

§ 1. To these things it is answered thus: Consent is the perception of two or more persons directed to the same thing. But one who errs does not perceive; therefore that person does not consent, that is, does not perceive together with others. But this woman erred; therefore she did not consent. Accordingly, she is not to be called a spouse, because the consent of both, without which there can be no marriage, was not present there. For just as one who is ordained by a man whom he thinks to be a bishop, but who is still a layman, errs and is not called ordained—indeed, he must still be ordained by a bishop—so this woman, erring, has been joined to no one in marriage; indeed, she must still be joined.

§ 2. To this it is said: not every error voids consent. For one who takes as wife a woman whom he thinks to be a virgin, or one who takes a prostitute whom he thinks to be chaste, each errs, because the one considers a corrupted woman to be a virgin and the other reckons a prostitute chaste. Are

they therefore to be said not to have consented to them? Or will each man be given the faculty of putting each woman away and taking another? It is true that not every error excludes consent. But one error concerns person, another fortune, another condition, another quality. Error of person is when this man is thought to be Virgil, but he is Plato. Error of fortune is when one who is poor is thought to be rich, or conversely. Error of condition is when one who is a slave is thought to be free. Error of quality is when one who is evil is thought to be good. Error of fortune and quality does not exclude consent to marriage. But error of person and condition does not admit consent to marriage. For if someone were to make an agreement that he would sell a field to Marcellus, and afterward Paul were to come, saying that he was Marcellus, and purchase the field from him, did that man agree upon the price with Paul, or is he to be said to have sold the field to him? Likewise, if someone promised that he would sell me gold, but offered me orichalcum in place of gold and thus deceived me, would I be said to have consented to the orichalcum? I never wished to buy orichalcum, and therefore I never consented to it, because consent belongs only to the will. Therefore, just as error concerning the material excludes consent here, so also does error of person in marriage. For she consented not to this man, but to the man whom she thought this man to be.

§ 3. But it is objected: Jacob had not consented to Leah, but to Rachel; indeed, he had served seven years for Rachel. Therefore, when Leah was substituted for Rachel without his knowledge, there was no marriage between them, if error of person excludes consent, because, as was said, he had consented not to Leah but to Rachel. To these things it is answered thus: One consent precedes and another follows. Consent precedes when, before carnal union, each consents to an indivisible manner of life; it follows when, after concubinary or fornicatory intercourse, they consent to the same thing. Therefore, preceding consent did not make Jacob and Leah spouses, but subsequent consent did. Yet from the first intercourse they are not judged fornicators, since he knew her with marital affection and she rendered him his due with wifely affection, thinking herself joined to him by right through the law of firstborn daughters and her father's commands.

§ 4. That error of person excuses some persons is proved by that authority in which the wife's sister, with both sister and husband unaware, is reported to have gone into the wife's bed and to have been known by her sister's husband. Although she is judged to remain perpetually without hope of marriage, nevertheless the man who knew her through ignorance is excused. This is also proved in another way. The devil sometimes transforms himself into an angel of light, and the error is not dangerous if he is then believed to be good when he feigns himself good. Therefore, if he were then to ask some simple person whether that person wished to be a participant in his blessedness, and the person answered that he wished to pass into fellowship with him, would he be said to have consented to fellowship in diabolical damnation, or rather to participation in eternal glory? Likewise, if one of the heretics, under the name of Augustine, Ambrose, or Jerome, presented himself to some Catholic and called him to imitate his faith, if the Catholic gave assent, to the judgment of whose faith would he be said to have consented? Not to the sect of the heretics, but to the integrity of the Catholic faith which that heretic falsely claimed to have. Therefore, because this person, deceived by error, consented not to this man but to the man whom he falsely claimed to be, it is evident that she was not his spouse.

§ 5. Error of fortune and quality does not exclude consent. For example, if someone consented to the prelacy of a church which he thought to be rich, but it was less wealthy, although he was deceived by

an error of fortune, he could not renounce the prelacy he had accepted. Similarly, a woman who marries a poor man, thinking him rich, cannot renounce her former condition, although she erred. Error of quality likewise does not exclude consent. For example, if someone bought a field or vineyard which he thought to be exceedingly fruitful, although he erred as to the quality of the things by buying a less fertile property, he nevertheless cannot rescind the sale. Similarly, one who takes as wife a prostitute or a corrupted woman whom he thinks to be chaste or a virgin cannot put her away and take another.

Question II

GRATIAN. PART I. The second question was proposed concerning condition: whether it is lawful for a woman to put away a man whom she thought free if she afterward finds him to be a slave. That it is not lawful for a woman to depart from a slave appears capable of proof by many reasons. For in Christ Jesus there is neither Jew nor Greek, neither slave nor free; therefore neither is there such a distinction in the marriage of Christians. For each is governed by the same law in the faith of Christ. For it is said by the Apostle without distinction to all: "He who wishes to marry, let him marry in the Lord." And likewise: "Let a woman marry whom she wishes, only in the Lord." It is not commanded that a freeborn woman marry a freeborn man, or a female slave a slave; rather, let any one of them marry whom she wishes, provided that it is in the Lord.

C. I. It is lawful for slaves to contract marriages.

Likewise Pope Julius, c. 4. All of us have one Father in heaven, and each person, rich and poor, free and slave, will render an account equally for himself and for their souls. Therefore, we do not doubt that all, of whatever condition they may be, have one law with respect to the Lord. But if all have one law, then, just as a freeborn person cannot be put away, so neither will a slave once joined in marriage be able thereafter to be put away.

C. II. It is not lawful for a man to put away a female slave received in marriage.

Likewise Pope Zachary. If a free man has received a female slave in marriage, he does not have permission to put her away if they were joined by the consent of both, except for the cause of fornication; rather, henceforth there will be in all things one law for the man and the woman.

C. III. It is established that there is a legitimate marriage between a patron and his freedwoman.

Likewise Pope Julius. If anyone has given his female slave freedom and associated her with himself in marriage, it was doubted among some whether marriages of this kind should appear legitimate or not. We, therefore, resolving the ancient ambiguity, judge such marriages to be legitimate. For if all marriages come about from affection, nothing impious or contrary to the laws can occur in such a union. Why, then, should we have considered the aforesaid marriages to be prohibited?

PART II. GRATIAN. To these things it is answered thus: It is not denied that a freeborn woman can marry a slave; rather, it is said that, if he is not known to be of servile condition, he can freely be put away when his servitude has been discovered. But that saying of the Apostle and of Pope Julius is to be understood of those whose condition is known to both. Yet this man's condition was unknown to

the woman. Therefore, she is not compelled by the foregoing authorities to remain with him, but is shown to be free either to remain or to depart. Hence at the Council of Verberie, which King Pepin attended, it was established in c. 6:

C. IV. Concerning a man who takes as wife a female slave whom he thinks to be free.

If any freeborn man has received as wife another man's female slave and thinks that she is freeborn, if the woman is afterward discovered to be in servitude, if he can redeem her from servitude, let him do so; if he cannot, let him receive another if he wishes. But if he knew that she was a female slave and approved it, thereafter let him have her as a legitimate wife. A freeborn woman ought to act similarly concerning another man's slave.

C. V. It is not lawful for a woman to put away a man whom she knowingly received as a husband while he was a slave.

Likewise from the same Council, c. 8. If a freeborn woman has received a slave, knowing that he was a slave, let her keep him, because we all have one Father in heaven. There will be one law for the man and the woman.

C. VI. A woman who, after a dispute concerning her status, proves herself free cannot be put away on the ground of servitude.

Likewise Gregory, [Book VI, epistle 1, to Bishop Fortunatus]. Your Fraternity knows more carefully for what cause the bearer of these presents, when compelled to come here with her mother last year, came: namely, because her husband, your cleric, is known to have removed her from his company after she was accused of having been of servile condition. They also assert that, while you were here, you promised that, if by the Lord's aid she were able to prove herself free, you would restore her to her marriage. Therefore, let Your Fraternity know that, by the revelation of God, the author of liberty, she has been proved free, and no blemish of servile status has been found in her. These things being known, we wish her to be restored to her husband without any delay, and let that same man no longer seek for himself contrived pretexts by which he may cast her off. For if this is not fulfilled by you—which we do not believe—and perhaps he delays receiving her, know that we will correct it with rigorous punishment.

GRATIAN. When it is said, "knowing that he was a slave," it is given to be understood that, if she did not know that he was a slave, she is not compelled to remain with him. Therefore, because this woman suffered deceit both as to person and condition, she is not compelled to adhere to the man by whose fraud she was deceived. But if she received a free man, and he, in order to furnish a cause for discord, made himself someone's slave, he will neither be able to put away his wife, nor will she be able to be reduced to servitude because of the bond of marriage. Hence in the Council of Tribur:

C. VII. On the ground of a condition deceitfully changed, a husband is not to depart from the woman whom he received while free.

It was reported to the holy synod that a certain freeborn man had received a freeborn wife and, after the procreation of children, had made himself someone's slave as an occasion for divorce—that is, marital separation. It was asked whether he necessarily ought to keep the woman and, if he kept her, whether she too ought to be subjected to servitude according to secular law. It was judged that the

wife ought by no means to be put away, yet that, because of Christ's law, the woman was not to be reduced to servitude, since he made himself a slave without the consent of the spouse who had received him as a free husband.

GRATIAN. It is also asked whether, if the slave of one person receives another person's female slave, there is a marriage between them. Concerning these persons it was established thus in the Council of Chalon, [II, c. 30]:

C. VIII. Let masters not dissolve legitimate marriages of slaves by their own authority.

It has been told to us that certain persons dissolve legitimate marriages of slaves by a certain presumptuous exercise of power, not attending to that saying of the Gospel, "What God has joined, let man not separate." Hence it has seemed good to us that marriages of slaves are not to be dissolved, even if they have different masters; rather, while remaining in one marriage, let them serve their own masters. And this is to be observed in those cases where there was a lawful union and it occurred by the will of the masters.

Causa XXX

CASE XXX.

GRATIAN. A certain man, hindered by the great crowd of people, received his own son from baptism while believing that he was receiving another's child. His wife, while craftily wishing to receive her own child, received another child whom the man adopted as his son; and a daughter is born to him from his wife, whom, while each was in the cradle, he gave to his adopted son, his wife's spiritual son. After three years the wife dies, and the man who was her coparent secretly betrothed to himself the widow of his wife's coparent; a little time passed, and another man publicly took her as wife. (Q. I.) It is asked whether one who received his own son from sacred baptism can render the marital due to his wife. (Q. II.) Second, whether betrothals are contracted between infants. (Q. III.) Third, whether spiritual or adopted children can be joined to natural children. (Q. IV.) Fourth, whether it is lawful for anyone to take the wife of his wife's coparent. (Q. V.) Fifth, whether a clandestine betrothal prejudices a public one.

Question I

GRATIAN. PART I. That one who transfers his own son to himself as a spiritual son cannot render the marital due to his wife is proved by reason and authority. For by no authority is it permitted that anyone be carnally joined to his co-mother. But this man made his wife his co-mother; therefore, he will not be able thereafter to be joined carnally to her. Hence Deusdedit, Bishop of the Holy Roman Church, writes to Gordian, bishop of the church of Hispania and his dearest brother:

C. I. Let men be separated from wives who by some accident held their own children before bishops.

A deacon came to us bearing the letter of Your Holiness, reporting that, on the past Holy Saturday, certain men and women, because of the great influx of people, unknowingly received their own children from the sacred font. You therefore desire to know whether, on account of such a

circumstance that occurred, the men and women ought to return to their own marital relations or not. Grieved by this matter, we investigated the sayings of our predecessors. We found in the archives of the Apostolic See that such things had already happened in the churches of Isauria and Ephesus, as well as Jerusalem and other churches. When the bishops of those cities also wished to know from this Apostolic See whether the men and women should return to their own bed, the holy Fathers of blessed memory Julius, Innocent, and Celestine, with the consent of a great many bishops and priests, forbade such things in the church of the Prince of the Apostles, prescribed, and confirmed that women and men, whoever for any reason received their own children, should in no way receive one another in marriage but should separate, lest, at the devil's persuasion, such a vice grow strong. You know that, just as there are seven gifts of the Holy Spirit, so there are seven gifts of baptism, from the first nourishment of blessed salt and entrance into the church up to confirmation through chrism. Therefore, from the first up to the seventh, no Christian ought to receive his co-mother in marriage. And let anyone who has presumed to do so be bound by the bond of anathema until he has performed penance worthily.

C. II. Let one who held his stepchild before a bishop be separated from his wife.

Likewise from the Council of Verberie, c. 4. If anyone has held his stepson or stepdaughter before a bishop for confirmation, let him be separated from his wife and never receive another. The same applies to a woman.

PART II. GRATIAN. To the contrary, however, Nicholas writes to the bishop of Salona, saying:

C. III. Let a woman who lifted her stepson from the sacred font not be separated from her husband.

You desire to know whether a woman who lifted from the sacred font her husband's son born of another woman can afterward be joined to the same man. We decree that they can be joined for this reason: according to the sacred canons, unless by the consent of both, no spouse ought to put away a spouse on the pretext of religion. It leads to the great ruin of a wife who, bearing hatred for her husband or not considering his weakness, commits impiety as though for the sake of piety, especially since the Apostle commands: "Do not," he says, "defraud one another, except by consent for a time, so that you may give yourselves to prayer; and return again to the same thing, lest Satan tempt you because of your lack of continence." Therefore, if it is proved not to have been done by the consent of both spouses, let them not defraud one another, but let them return to the same thing, especially since the Apostle says: "The wife does not have power over her own body, but the husband; just as the husband does not have power over his own body, but the woman."

C. IV. Let a woman who fraudulently held her own son before a bishop not be separated from her husband, but let her perform penance.

Likewise from the Second Council of Chalon, c. 4. It has been told to us that certain women, some carelessly and others fraudulently, held their own sons before bishops for confirmation so that they might be separated from their husbands. Hence we have judged it worthy that, if any woman through carelessness or some fraud has held her own son before a bishop for confirmation, she is to perform penance for as long as she lives because of her deceit or fraud; nevertheless, she is not to be separated from her husband.

C. V. Let those who take their goddaughter or spiritual mother as wife be separated and struck with a grave penalty.

Likewise from the Council of Mainz, c. 10, held in the cloister of Saint Alban. Concerning what you asked—if anyone took his goddaughter as wife, and concerning one who lay with his spiritual co-mother, and concerning one who baptized his own son and whose wife received him from the font for this purpose, that a separation of the marriage might occur: whether they can afterward remain in such a union—the response concerning such persons is as follows. If anyone has taken his goddaughter or his co-mother in marriage, we judge that they are to be separated and struck with grave penance.

But if legitimate spouses, one or both, deliberately acted so that they received their own son from the font, if they wish to remain unmarried, it is good; but if not, let grave penance be enjoined upon the one who plotted it, and let them remain together. And if the violator of the marriage survives the other, let that person be punished with the most severe penance and remain without hope of marriage.

C. VI. Let those who hold their stepchildren before a bishop not be separated from their wives.

Likewise Pope Nicholas to Rudolf, bishop of Bourges. Concerning those who hold their stepchildren before bishops for confirmation—that is, who support upon themselves the sons of their wives by a former husband while they are chrismated by the bishops—if it is done through ignorance, as you assert, although it is a sin, nevertheless it is not to be punished as far as separation of the marriage. Yet let them mourn and, washing this away by worthy penance, say to the Lord: "Remember not the offenses of our ignorance."

C. VII. Let one who baptized his own son because of necessity not be separated from his wife.

Likewise Pope John to Anselm, bishop of the church of Limoges. This man present here, named Stephen, coming for the sake of prayer to the threshold of blessed Peter, prince of the Apostles, made known to our episcopate by his representation that, when his son lay at the extremity of life, not yet washed by the water of baptism, he baptized him because, in the absence of priests, extreme necessity compelled him; and he himself received him, holding him in his own hands. When this affair was disclosed to you, Your Reverence, as though burning with zeal for rectitude, judged that the aforesaid man was to be separated from his spouse. This ought by no means to be done, since Scripture says that a wife has been joined to a husband by the Lord, and: "What God has joined, let man not separate." Hence the Lord too most openly commands in the Gospel that a man cannot put away his wife except for the cause of fornication. And we, relying upon the preeminent command of so great an authority, say that what necessity occasioned is to be let go and judged blameless. For this work of baptizing, according to canonical authority, is freely permitted to faithful laypersons to do if it should be necessary. Hence, if the aforesaid father, seeing his son dying in body, washed him with the sacred water of baptism lest he leave his soul to perish by perpetual death, so that he might snatch him from the power of the author of death and darkness and send him without doubt into the kingdom of Christ, there now to reign, he is praised for having done well. For that reason we judge him to remain joined without penalty, for as long as he lives, to his wife already long ago legitimately

associated with him, and not in any way to be separated on this account contrary to the aforesaid divine authorities.

PART III. GRATIAN. A woman is called a spiritual daughter not only of the one who receives her, but also of the one who dips her in sacred baptism with the invocation of the threefold immersion. A woman who confesses her sins to a priest is also called the priest's spiritual daughter. The mingling with all these is shameful and is to be struck with the same penalty. Hence Symmachus says:

C. VIII. Equal penance is enjoined upon one who is shown to have violated his spiritual daughter and his female penitent.

All whom we receive in penance are our spiritual children, just as are those whom the water of sacred baptism regenerated either when we received them or when we immersed them under the invocation of the threefold immersion. Sylvester also teaches and admonishes every priest that no one should approach his female penitent for the purpose of fornication, because it is written: "All whom we receive in penance are our children, just as those received in baptism." Therefore, if anyone has perpetrated this crime, let him not only lose the honor of his dignity but also subject himself to continual penance until death.

C. IX. Concerning the same matter. Likewise Celestine.

If any priest has fornicated with his spiritual daughter, let him know that he has committed grave adultery. Therefore, if the woman is a laywoman, let her leave all things, hand over her possessions to the poor, and, having converted, serve God in a monastery until death. But let the priest who gave an evil example to human beings be deposed from every office and perform penance by pilgrimage for fifteen years; afterward, let him go to a monastery and serve God there all the days of his life.

C. X. Concerning the same matter. The same.

A bishop or priest ought not to mingle with women who have confessed their sins to him. If perhaps —which may it not be—this happens, let him perform penance as for a spiritual daughter: a bishop for fifteen years and a priest for twelve, and let him be deposed, provided that the matter has come to the knowledge of the people.

GRATIAN. By these authorities, therefore, it appears that whether a woman received from the sacred font her own son or only her husband's son, she is not for that reason to be separated from her husband. The same must likewise be understood concerning a man.

Question II

GRATIAN. Betrothals cannot be contracted before the age of seven. For they are contracted by consent alone, which cannot intervene unless what is transacted between them is understood by each party. Therefore, betrothals are proved unable to be contracted between children whose weakness of age does not admit consent. Pope Nicholas attests this same thing, saying:

SOLE CHAPTER. Before the time for consenting, marriage cannot be contracted.

Where there is not the consent of both, there is no marriage. Therefore, those who give girls to boys in their cradles, and conversely, accomplish nothing unless each of the children consents after reaching the time of discretion, even if the father and mother did this and willed it.

Question III

GRATIAN. PART I. That spiritual or adopted children cannot be joined to natural children is attested by Pope Nicholas in his response to the inquiries of the Bulgars, [c. 2], saying thus:

C. I. One who is received from the sacred font is the son of the one by whom he is received.

A person ought to love the one who received him from the sacred font as a father.

Likewise: § 1. Between spiritual brothers and children there is a gratuitous and holy communion, which is not to be called consanguinity, but is to be held as spiritual kinship. Hence I judge that no lawful marriage whatever can take place between them, since the venerable laws do not permit marriages to be contracted even between those who are children by nature and those who are children by adoption.

Likewise: § 2. If marriage is not contracted between those whom adoption joins, how much more ought those whom regeneration of the Holy Spirit binds through the heavenly sacrament to abstain from carnal union with one another? Far more fittingly, therefore, he says, is one whom divine grace rather than human will chose to be his son or my brother called the son of my father or my brother; and more prudently do we separate them from mutual mingling of the body.

C. II. A spiritual daughter can in no way marry a natural son.

Likewise Bishop Zachary, servant of the servants of God, to the most reverend Theodore, bishop of the church of Pavia. Your venerable Fraternity offered us a letter by which you wished to ask us whether it is lawful for the son of a father who received another man's daughter from sacred baptism to receive in marriage the girl received—that is, that father's spiritual daughter—which it is cruel even to say, and which you asserted had occurred monstrously in your jurisdiction.

§ 1. But Your Holy Fraternity knows well that the Lord commanded Moses, saying: "You shall not uncover the nakedness of your father, or mother, or sister; for it is your nakedness." Therefore, since we are commanded to abstain from our own blood kin, much more is it fitting that, with every excuse or argument set aside, we guard ourselves under the greatest strictness from the spiritual daughter of our father, lest one incur the wrath of divine judgment if, after being mingled in such a crime, one has by no means restrained the reins of lust. Hence all must also be kept from a mingling involving so great a crime, lest they perish perpetually. But Your Fraternity is in every way to strive to separate this man who, despising the salvation of his soul, has mingled himself in an impious marriage of this ruinous rashness, and to subject him to worthy penance, so that you may gain his soul, snatched from eternal damnation.

C. III. Let no one dare to give to his own son a girl whom he received from the sacred font.

Likewise Zachary and Deusdedit. One ought never to give in marriage to one's own son a daughter whom one received from the sacred font, because in the divine judgment they are found to be siblings. If anyone mingled in such a crime has by no means restrained the reins of lust, he will be abhorred by the Catholic Church. But if he has been converted, after the separation let him perform penance for seven years. Let this condition apply to those who knew of it together with the principal actor; that is, let the collaborators and those consenting perform penance together with him.

PART II. GRATIAN. But children, whether born before or after the relationship of coparenthood, can lawfully be joined. Hence Urban II writes to Vitalis, priest of Brescia, saying:

[C. IV.]

"Concerning the matters on which Your Love consulted us, this seems to us to be the response according to judgment: both that there is baptism if, when necessity presses, a woman baptizes a boy in the name of the Trinity, and that the sons or daughters of spiritual parents, begotten before or after the relationship of coparenthood, can lawfully be joined, except for the person through whom they were made coparents."

But Paschal II prohibits those begotten after the relationship of coparenthood from being joined, writing to Bishop Reginus:

C. V. Those born of a co-father or co-mother after children have been received from the font cannot be joined.

But after a spiritual son or daughter has been received from the font, those who have been born of the co-father or co-mother cannot be joined in marriage, because secular laws forbid those not emancipated from being joined to adopted children.

[PALEA. C. VI.

The same is considered from Book XXIII of the *Digest*, under the title *On the Rite of Marriage*, in which it is read thus: Brotherhood acquired through adoption impedes marriages for as long as the adoption remains; and therefore I will be able to take as wife a woman whom my father adopted and emancipated. Equally, if, after I have been emancipated, he retains her in his power, we will be able to be joined in marriage. Therefore, one who wishes to adopt a son-in-law is advised to emancipate his daughter. Similarly, one who wishes to adopt a daughter-in-law is advised to emancipate his son.]

PART III. GRATIAN. But if anyone, through some fortuitous event, has taken the daughter of his co-mother as wife, he is not compelled to put her away. Hence it is read in the Council of Tribur, [c. 48]:

C. VII. One is not compelled to put away the daughter of one's co-mother whom one took in marriage.

We neither define this by canonical institution nor reject it by any prohibition; but because of those who think differently about it, we record something in this place. If anyone has taken in marriage the daughter of his spiritual co-mother fortuitously and through circumstances so occurring, after mature counsel has been observed, let him keep her and duly devote himself to a respectable, legitimate marriage.

Question IV

GRATIAN. PART I. No one can take as wife the widow of his wife's co-father. Hence Pope Nicholas writes to Solomon, bishop of Constance:

C. I. It is not lawful for anyone to have two co-mothers.

Your Holiness asks us whether any man can have two co-mothers, one after the other. In this matter he ought to remember that it is written: "The two shall be in one flesh." Therefore, since it is established that a man and woman are made one flesh through marriage, it clearly follows that the man is constituted co-father of the woman whose co-mother the wife taken in marriage appeared to be. For that reason it is clear that the man cannot be joined in union to the woman who was co-mother of the woman with whom that same man had been made one flesh.

C. II. Let one who mingles with two co-mothers perform penance for eight years.

Likewise from the Council of Chalcedon. If a father and son, or two brothers, have lain with one woman; or if someone has lain with a mother and daughter, or with two sisters, or with two co-mothers, let him perform penance for eight years according to the ancient and more humane determination.

C. III. Let no one mingle with two co-mothers.

Likewise Innocent to Exsuperius, bishop of Toulouse. If either one of a married pair receives the son or daughter of another from the sacred font, holds the child for chrism, or imparts the mystery of Christianity, both wife and husband become coparents of the infant's parents, because man and woman have been made one flesh.

PART II. GRATIAN. To the contrary it is found in the Council of Tribur, c. 47:

C. IV. One may take the wife of one's co-father if she herself had not been one's co-mother.

One who has a spiritual co-father, whose son he received from the washing of the sacred font, and whose wife is not his co-mother, may, after his co-father has died, take the widow as wife if she has no nearness of consanguinity. For what then? Can those whom no carnal kinship and no spiritual generation separates not be joined?

C. V. Concerning the same matter.

Likewise from the letter of Pope Paschal II to Bishop Reginus. No reason or authority appears to prohibit a surviving husband, after his wife's death, from being joined in marriage with his wife's co-mother. For spiritual kinship is not equated with kinship of the flesh, nor does one pass through the union of the flesh to union of the spirit.

PART III. GRATIAN. But it must be noted that it is one thing to know carnally someone's co-mother and another thing for a woman left behind by someone to become someone's co-mother. That authority of Pope Nicholas and of the Synod of Chalcedon prohibits from being joined in marriage to his wife's co-mother the man who rendered the marital due to his wife after she became the co-mother of that woman. But that authority of the Council of Tribur permits those to be joined in

marriage in the case where his wife, after she is left by her husband, becomes the co-mother of that woman, and is not known carnally by her husband after the relationship of coparenthood. It is asked, moreover, whether a wife ought together with her husband to receive a child in baptism. Concerning these matters Urban II writes thus to Vitalis, priest of Brescia:

C. VI. Let a wife not receive someone's child in baptism together with her husband.

That a wife ought not to receive a child in baptism with her husband is found to be prohibited by no authority. But so that the purity of spiritual paternity may be preserved immune from every blemish and infamy, we have decreed it worthy that both should by no means presume together to aspire to this. But because one who married two co-mothers or two sisters committed an expiable crime, great penance ought to be enjoined upon him according to the measure of the fault.

GRATIAN. But that saying of the Council of Tribur, "One who has a spiritual co-father, etc.," is understood to have been said before this prohibition; or the wife is understood to be a co-mother not from the same child as the husband, but from another.

Question V

GRATIAN. PART I. That clandestine marriages ought not to be made is attested by Pope Evaristus, writing to the bishops of Africa, [epistle 1]:

C. I. Clandestine marriages ought not to be made.

A marriage is not made legitimate otherwise than if the wife is sought from those who are seen to have authority over the woman herself and by whom she is guarded; if she is betrothed by her nearest relatives and endowed according to the laws; if, at the proper time, as is the custom, she is blessed by a priest with prayers and offerings; if, guarded and accompanied by the bridal attendants as custom teaches, sought from her relatives at the proper time, she is endowed according to the laws and solemnly received; and if for two or three days they devote themselves to prayers and preserve chastity.

Likewise: § 1. Know that marriages performed thus are legitimate; but do not doubt that those presumed otherwise are not marriages, but rather adulteries, informal unions, acts of defloration, or fornications rather than legitimate marriages, unless their own will has supported them and lawful vows have come to their aid.

C. II. It is not lawful for marriages to be celebrated secretly.

Likewise from a decree of Pope Hormisdas, c. 6. Let no believer, of whatever condition, make a marriage secretly; rather, having received a blessing from a priest, let that person marry publicly in the Lord.

C. III. Marriages ought to be celebrated publicly.

Likewise Nicholas in response to the inquiries of the Bulgars, [c. 3]. Our people, both men and women, do not wear upon their heads a band of gold or silver, or one fashioned from any metal, when they contract the bonds of marriage. Rather, after the betrothal, which is the promise of future

marriage, the covenants are also celebrated by the consent of those who contract these things and of those in whose power they are. And after the bridegroom has betrothed the bride by pledges, marking her finger with the ring of fidelity, and has delivered to her, before persons invited by both parties, the dowry pleasing to each together with a writing containing this agreement—either immediately or at a suitable time, lest, namely, they presume to do any such thing before the time determined by law—both are led to the bonds of marriage. First they are placed in the church of the Lord with offerings, which they ought to offer to God through the hand of the priest, and thus at last they receive the blessing and heavenly veil.

Likewise: § 1. These, besides other things that do not occur to memory, are the solemn agreements of marriages. We do not, however, say that it is a sin if all these things do not intervene in the marriage covenant.

C. IV. These things are to be observed in contracting marriage.

Likewise Pope Leo. What sort of wife is to be had according to the law: a chaste virgin, betrothed in virginity, lawfully endowed, handed over to the bridegroom by her parents, to be received by the bridal attendants, and thus, according to the law and the Gospel, plainly to be taken into marriage in public nuptials; never to be separated for a human reason during all the days of her life—except by consent and for the sake of devoting themselves to God—and, if she has fornicated, to be put away, but while she is living another is not to be taken, because adulterers will not possess the kingdom of God; and her penance is to be received in writing.

C. V. How the bridegroom and bride are to approach the blessing.

Likewise from the Fourth Council of Carthage, [c. 13]. When the bridegroom and bride are to be blessed by a priest, let them be presented in the church to the priest by their parents or by the bridal attendants; and when they have received the blessing, let them remain in virginity that same night out of reverence for the blessing.

C. VI. Let no one take a wife without public nuptials.

Likewise from the Council of Arles, c. 6. Let no marriage be made without a dowry; let a dowry be made according to one's means, and let no one presume to marry or take a wife without public nuptials.

GRATIAN. By all these authorities secret nuptials are prohibited, and therefore, when nuptials occur contrary to authority, they ought to be held as not having occurred.

PART II. § 1. But it is asked what those solemnities of the veil and ring that are observed in marriages mean. Concerning these Isidore writes thus in Book II of *On Ecclesiastical Offices*, c. 16:

C. VII. Why women are veiled when they marry.

Women are veiled when they marry so that they may know that they are always to be subject and humble to their husbands.

§ 1. Likewise, the fact that after the blessing those marrying are joined to one another by a headband in a single bond is done, namely, so that they may not break apart the joining of marital unity.

§ 2. But the fact that the same headband is interwoven with white and purple color has this meaning: whiteness is purity of life, while purple is applied to the posterity of blood, so that by this sign both continence and the rule of practicing continence for a time may be impressed upon each, and afterward the rendering of the marital due may not be denied.

§ 3. Likewise, the fact that at the beginning a ring is given by the bridegroom to the bride is done, certainly, either as a sign of mutual love, or rather so that their hearts may be joined by the same pledge. Hence the ring is also placed upon the fourth finger, because a certain vein in it, as is reported, reaches all the way to the heart.

C. VIII. Nuptials are said to be named from veiling, because women are accustomed to veil their head.

Ambrose in the book *On the Patriarchs*. PART III. Nor is it without significance that, when Rebecca came, she saw Isaac walking about and, when she had asked who he was and learned that he was the one to whom she was being led as wife, she descended and began to veil her head, teaching that modesty ought to precede nuptials. For from this nuptials are also named, because, for the sake of modesty, young women veiled themselves.

PART IV. GRATIAN. But it is objected to the foregoing: There are many things that are prohibited which, if they occur, acquire validity afterward. Those who have taken vows are prohibited from contracting marriages, which nevertheless, if they have contracted them, must remain inviolate. So also clandestine marriages are indeed made contrary to the laws; nevertheless, once contracted, they cannot be dissolved, because they are strengthened by a lawful vow that follows. Hence also Evaristus, after he had said, "Marriages presumed otherwise are not marriages, but adulteries," added: "unless their own will has supported them and lawful vows have come to their aid." Hence also in the Novels:

[C. IX.]

"If anyone, touching the divine Scriptures, has sworn to a woman that he will have her as his lawful wife, or if he has given such an oath in an oratory, let her be his lawful wife, although no dowry and no other written instrument has intervened."

[GRATIAN.] To these things it is answered thus: Marriages that are contracted secretly are not denied to be marriages, nor are they commanded to be dissolved, if they can be proved by the confession of both. Nevertheless, they are prohibited because, when the will of one of them has changed, credibility cannot be created for the judge by the confession of the other. Hence, when the vows of one have publicly transferred themselves to another party, a judgment cannot be rendered for the former marriage, which is uncertain to the judge. For, as Pope Sixtus writes to the bishops established throughout Spain, let none of the pontiffs presume to judge uncertain matters; and although they are true, those things are nevertheless not to be believed unless they are proved by certain indications, unless they are established by manifest judgment, unless they are made public by judicial order. Hence Pope Victor also writes to Bishop Theophilus: "Dearest brother, let us in no way judge uncertain matters until the Lord comes, who will bring hidden things into the light, illuminate the things concealed in darkness, and manifest the counsels of hearts. For although they are true,

they are nevertheless not to be believed unless they are proved by manifest indications, unless they are established by manifest judgment, unless they are made public by judicial order."

C. X. No one is to be judged or condemned before just proof.

Likewise Pope Evaristus, [epistle II], to all bishops. We ought to judge or condemn no one before true and just proof, as the Apostle testifies when he says: "Who are you who judges another's servant? To his own master he stands or falls." Therefore, let evil things heard move no one, nor let anyone ever believe things said indiscriminately without certain proof; rather, let him carefully investigate what he has heard beforehand, and let no one do anything precipitately.

C. XI. No matters are to be judged before they are demonstrated by certain indications.

Likewise Pope Eleutherius, [epistle to the provinces of Gaul]. One who judges must examine all things and investigate the order of events by a full inquiry, with patience for asking, answering, and objecting afforded by him, so that there the case of both parties may be fully illuminated. Nor should a judge wish to forestall the litigants by his judgment before, after everything has already been completed, they have nothing in question to propose; and let the case be debated until they arrive at the truth of the matter. It is necessary to ask questions repeatedly, lest perhaps something remain omitted which ought to be adjoined.

GRATIAN. From the foregoing it is most manifestly gathered that one must not depart from certain things on account of uncertain things, nor is a definite judgment to be given in a doubtful matter. But since credibility concerning a doubtful matter cannot be created for a judge except by the confirmation of witnesses or by a lawful confession, and since, by the authority of Pope Callixtus, witnesses cannot give testimony concerning cases or affairs other than those which are known to have been done in their presence, it appears that clandestine marriages are prohibited for this reason: when one of them wishes to deny having had marital affection toward the other, that person will not be able to be convicted by lawful proofs. When these are lacking and each has been duly absolved by the judgment of the judge, each incurs the guilt of adultery when, while both of them are living, they join themselves to others.

Causa XXXI

CASE XXXI.

GRATIAN. Another man defiled a certain man's wife; after that man died, the adulterer took the adulteress as his wife. He swore that he would give as wife to a certain man a daughter begotten of her. She did not give her assent. Then her father handed her over to another; she is reclaimed by the first. (Q. I.) It is asked whether one who was first polluted through adultery can be taken in marriage. (Q. II.) Second, whether a daughter is to be handed over to someone against her will. (Q. III.) Third, whether, after her father's promise, she can marry another.

Question I

GRATIAN. PART I. A woman polluted by adultery is prohibited from being taken in marriage by the authority of Pope Leo, in which it is said:

C. I. Let no one take in marriage a woman whom he previously polluted by adultery.

Let no one take in marriage a woman whom he previously polluted by adultery. But Augustine testifies to the contrary, writing to Valerius in *On Marriage and Concupiscence*, [Book I, c. 10]:

C. II. It is lawful for someone to take in marriage a woman whom he previously polluted through adultery.

Finally, after the man with whom there was a true marriage has died, a marriage can be made with the woman with whom adultery preceded.

Likewise in the book *On the Good of Marriage*, [c. 14]. § 1. It is manifest that lawful marriages can be made from persons lawfully joined, when an honorable agreement follows.

GRATIAN. This last authority speaks of concubines, asserting that concubines can pass to the honorable agreement of marriage. The first authority of Augustine speaks of a repudiated woman. When someone takes her in marriage while her husband is living, he commits adultery; this adultery has some pardon when his union with her is believed to be lawful.

§ 1. But that saying of Pope Leo is to be understood of a woman who had not been repudiated by her husband, whose husband was living and rendering her the marital due. Hence at the Council held at Altheim in the presence of King Conrad it was established in c. 6:

C. III. Let no one take in marriage a woman whom he previously polluted through adultery.

By common decree, in accordance with the institutions of the canons, we determine and adjudge that, if anyone has fornicated with another man's wife while he was living, after the husband has died the unlawful approach to her is to be closed to him by synodal judgment, nor is the woman whom he previously polluted by adultery thereafter to be joined to him in marriage. For we do not will, nor does it accord with the Christian religion, that anyone take in marriage a woman whom he previously polluted through adultery.

GRATIAN. Here it must be understood: unless penance has first been completed, and if he contrived nothing toward the husband's death, or if, while the husband was living, he did not give the adulteress his pledge that he would take her as his wife if he survived her husband. Hence it is read in the Council of Tribur:

C. IV. After the husband's death, a man who, while the husband was living, gave the adulteress an oath concerning their future marriage cannot take her in marriage.

It was reported to the ears of the holy priests that a certain man had violated another man's wife by illicit intercourse and, moreover, while her husband was living, had given the adulteress an oath that,

after the death of her lawful husband, if he survived him, he would take her as wife—which was also done. Therefore, we prohibit and anathematize such a marriage.

C. V. After completing penance, a man will be able to take as wife the widow whom he polluted by adultery while her husband was living.

Likewise in the same Council. If anyone is accused of having committed adultery with another man's spouse while the husband was living, and, when he died soon afterward, is known to have taken the same woman, let him in every respect be subjected to public penance. Concerning him, after penance, the aforesaid rule will also be observed if it is expedient, unless perhaps that same man—or the woman—is reported to have killed the husband who had died, or kinship or any other criminal action impedes them. But if this has been proved, let them remain perpetually with penance, without any hope of marriage.

[PALEA. C. VI.

Likewise from the Council at Verberie. If any woman has conspired with others toward her husband's death, and the husband himself, in defending himself, has killed one of them, if that man can prove that she was guilty of the conspiracy, he can, as it seems to us, put away that wife and, if he wishes, take another. But let the woman who plotted against him remain subject to penance without hope of marriage.]

C. VII. After penance, let a widow who took her adulterer as her husband be reconciled to communion.

Likewise from the Council of Elvira, [c. 72]. If any widow has committed adultery and afterward had the same man as her husband, it was decided that, after a period of five years and the performance of lawful penance, she is to be reconciled to communion.

PART II. GRATIAN. But it is objected: David committed adultery with Bathsheba and contrived the death of Uriah, and nevertheless afterward took the same Bathsheba as wife. But in the Old Testament many things were permitted because of weakness which have been eliminated in the perfection of the Gospel. Thus, anyone was permitted to give a bill of repudiation, lest innocent blood be shed through hatred. The Lord later prohibited this in the Gospel, saying that a wife is not to be put away by her husband except for the cause of fornication. Certain things were permitted on account of weakness and as a sacrament of future things. Thus the Lord permitted the children of Israel to offer to him in sacrifice animals which in Egypt they had been accustomed to sacrifice to demons, preferring that they be offered to himself rather than to idols, and so that they might be sacraments of future things for them. So also Bathsheba was permitted to be taken as wife, not more on account of his weakness than as a signification of future things.

§ 1. But there is another reason why the wife of the deceased cannot marry this man. For men and women are generally prohibited from contracting marriages repeatedly. Hence priests ought not to be present at the wedding feast of second marriages, as is read in the Council of Neocaesarea, [cc. 3 and 7]:

C. VIII. Let the faith and manner of life of those who repeatedly take spouses shorten their penance.

Concerning those who repeatedly take wives and those women who marry more often, a definite period has indeed been established for them, but their manner of life and faith shorten the period.

§ 1. A priest, moreover, ought not to be present at the wedding feast of a second marriage, especially since he is commanded to assign penance for second marriages. What priest will there be who, for the sake of the banquet, consents to those marriages?

C. IX. According to the reckoning of truth, one who takes a second wife is proved to fornicate.

Likewise John Chrysostom, [that is, the author of the *Incomplete Work on Matthew*, homily XXXII]. For this reason even the Apostles commanded recourse to second marriages because of human incontinence. For although it is lawful to receive a second spouse according to the Apostle's precept, according to the reckoning of truth it is truly fornication. But because it is committed publicly and lawfully by God's permission, it becomes honorable fornication. Therefore he said well that Moses permitted this; he did not command it. For it is one thing to command and another to permit. For what we unwillingly permit we command, because we cannot completely prohibit the evil wills of human beings.

C. X. To avoid the danger of fornication, second marriages are conceded.

Likewise Jerome, *On Virgins*. Just as he concedes marriage to virgins because of the danger of fornication and renders excusable that which is not sought for its own sake, so because of the same danger of fornication he concedes second marriages to widows. For it is better, although it be a second and a third husband, to know one man than many; that is, it is more tolerable to have been prostituted to one man than to many. Indeed, even that Samaritan woman in the Gospel, saying that she had a sixth husband, is reproved by the Lord because he is not her husband. For where there is a number of husbands, there a husband, who properly is one, ceases to exist. One rib at the beginning was turned into one wife. "And the two," he says, "shall be in one flesh"—not three or four, otherwise they are not two but many. Lamech, the first bloodthirsty man and murderer, divided one flesh among two wives; fratricide and second marriage were destroyed by the same punishment of the flood. Vengeance was taken sevenfold for the one and seventy-sevenfold for the other. As far as they differ in number, so far also in crime.

§ 1. How holy second marriage is, is shown by this: a twice-married man cannot be elected to the clergy. And the same Apostle says to Timothy: "Let a widow be selected who is not less than sixty years old and who was the wife of one husband." Here there is a common precept concerning those widows who are fed by the Church's alms, and therefore an age is prescribed, so that only those who can no longer work may receive the food of the poor. At the same time consider that a woman who had two husbands, even if she is old, decrepit, and needy, does not deserve to receive the Church's contributions. But if the bread of alms is taken away from her, how much more that bread which descended from heaven, of which whoever shall eat unworthily will be guilty of violating the body and blood of the Lord? Although some interpret these testimonies I set down above, in which widows are conceded permission to marry again if they wish, as concerning those widows whom the faith of Christ found in this state after they had lost their husbands.

PART III. GRATIAN. But that he said this as an exhortation to widowed continence, not in condemnation of second and subsequent marriages—which are established to be lawful by the authorities of many—is given to be understood from his own words. For he says to Pammachius, [in the *Apology against Jovinian*]:

C. XI. Neither second, third, nor subsequent marriages are to be condemned.

Let my detractors, I ask, open their ears and see that I have conceded second and third marriages in the Lord. I who did not condemn second and third marriages—could I have condemned a first marriage?

The same: § 1. I do not condemn the twice-married—indeed, not even the thrice-married, and, if it can be said, those married eight times.

The same: § 2. I now proclaim in a free voice that second marriage is not condemned in the Church—indeed, neither is third marriage—and that it is lawful to marry a fifth and sixth and subsequent husband just as it is to marry a second.

C. XII. Second marriages, like first marriages, are proved to be lawful.

Likewise Augustine, Book II *Against the Adversary of the Law and the Prophets*, [c. 11]. God joined male and female in nuptial chastity for the sake of propagating the race, and showed that second marriages, which are permitted also in the New Testament, are lawful.

[C. XIII.]

The same, on the First Epistle to the Corinthians. "But if her husband shall have fallen asleep." He does not say first, second, or fourth, nor is it for us to define what the Apostle does not define. Hence I ought neither to condemn any marriages nor to remove from them the modesty associated with their number. But the Lord did not condemn the woman who had had seven husbands, nor does he say that she cannot exist in the resurrection, but only: "They shall neither marry nor be given in marriage." Hence, contrary to the sense of human modesty, I do not dare to say that they may marry as often as they wish, nor do I from my own heart condemn marriages of any number whatever. What is said to a once-married woman is said to every widow: "She will be happier if she remains thus."

Question II

GRATIAN. That no woman is to be compelled to marry someone is attested by Ambrose on the First Epistle to the Corinthians: "Let a widow marry whom she wishes, only in the Lord"; that is, let her marry the man whom she considers suitable for herself, because unwilling marriages are accustomed to have evil outcomes.

"Only in the Lord": that is, so that she may marry without suspicion of shamefulness, and may marry a man of her own religion.

C. I. A girl is not compelled by her father's oath to marry a man to whom she never gave assent.

Likewise the judgment of Pope Urban. If it is established to be true what the envoys of Prince Jordan reported to us—namely, that he himself, under compulsion and grieving, betrothed his infant daughter, unwilling, weeping, and resisting with all her strength, to Rainald, son of Rodellus, while her mother and kindred did not assent but grieved greatly—then, because the authority of the canons and laws does not approve such betrothals, as is shown below, lest what we say seem too harsh to those ignorant of the laws and canons, we temper the judgment thus: if the prince, with the assent of the daughter, mother, and kindred, wishes to complete what was begun, we concede it. But if not, let our legate hear both parties; and if there is nothing further on the part of the aforesaid Rainald that would impede it, let him receive from Jordan himself an oath that these things stand as they have been stated. Then, following the decrees of the canons and laws, we henceforth do not prohibit his aforesaid daughter from marrying another man, if she wishes, only in the Lord.

[PALEA. C. II.

To the contrary, Pope Hormisdas writes to Bishop Eusebius. Your Holiness, venerable brother, asked us concerning an adult son whom his father wishes to contract a marriage: whether the father can do so without the will of the adult son. To this we say that, if the son does not consent in any way, it cannot be done. But concerning a son not yet adult, whose will cannot yet be discerned, the father can hand him over in marriage to whomever he wishes; and after the son reaches perfect age, he ought entirely to observe and fulfill it. We command that this, established by us, is to be maintained by all worshipers of the orthodox faith.]

C. III. Those whose body will be one ought also to have one mind; and therefore no unwilling woman is to be joined to anyone.

Likewise Sanctio, to the king of Aragon. Concerning the marriage of your granddaughter, whom, when necessity pressed, you confirmed under a pledge of faith that you would give to a certain knight, we decree, as equity dictates, that if she utterly refuses that man, as is said, and persists in the same exercise of her will, so that she entirely refuses that she will marry that man, you are in no way to compel her, unwilling and resisting, to be associated in marriage with that man. For those whose body is one ought also to have one mind, lest perhaps, when a virgin has been joined to someone unwillingly, contrary to the command of the Lord and the Apostle, she incur either the guilt of separation or the crime of fornication. It is established that the evil of this sin redounds upon the one who joined her against her will. The same is to be held concerning a man by an equal rule.

C. IV. It is not lawful for a man to desert a woman whom, after the dowry had been promised, he took as wife with public attestation.

Likewise Nicholas to Raduald, bishop of Porto, and John, bishop of Ficocle. King Lothair professes in his memorandum that he received Waldrada from her father and afterward admitted Hubert's sister. Here first inquire by diligent investigation; and if you find in every respect that the same glorious king received the aforesaid Waldrada after the dowry had been promised, before witnesses, according to the law and the rite by which nuptials are customarily celebrated, and that by public manifestation the same Waldrada was admitted into marriage with him, it remains for you to investigate why she was repudiated or Boso's daughter admitted. But because the same glorious king says that through

fear he admitted Theutberga, so great a king ought not, through fear of one man, to have plunged himself into an immense precipice contrary to the divine precept. In this he certainly shows himself more blameworthy, because in it he placed the love of the world before the love of God, since not even killers of the body, impelling a person against justice, are to be feared. Therefore, when the same king has been convicted by his own declaration, we command you nothing other than that, relying upon canonical authority in our stead, you decide his case. But if it is by no means proved that Waldrada was his lawful wife or had been joined to our son Lothair by nuptials celebrated in the customary manner—namely, through the blessing of a priest—advise him not to bear it with distress that his lawful wife, if she appears innocent, is reconciled to him.

§ 1. Furthermore, I wish you to know that the aforesaid Theutberga appealed to the Apostolic See twice and three times and complained that she had been unjustly cast off by the aforesaid glorious king and compelled by force to fabricate a false crime against herself. For at the time of her appeal she sent a written petition to the Apostolic See, in which she made known that she had not yet confessed, but was being compelled to state a false crime against herself, adding further: "But if I am compelled further, know that, not from truth but from fear of death and zeal to escape—because I cannot do otherwise—I will say what they wish." Hence we command you that, when the same Theutberga comes to the appointed synod as we established, you treat her case by diligent examination. And if it is objected to her that she had confessed that she committed some crime, while, to the contrary, she proclaims that she suffered violence, or if she testifies that those judges were hostile to her, then renew that judgment according to the norm of equity, so that she is not oppressed by a weight of injustice.

GRATIAN. By these authorities it is clearly shown that no woman is to be joined to anyone except by her free will.

Question III

GRATIAN. That, after their parents' promise, they cannot marry others is shown by the authority of the Council of Elvira, [c. 54], in which it is said:

SOLE CHAPTER. Concerning parents who break the pledge of a betrothal.

If any parents have broken the pledge of a betrothal, let them abstain from communion for a period of three years. But if the same bridegroom or bride have not been discovered in that grave crime, the parents will be excused. But if they have been involved in the same vice and have polluted themselves by consenting, let the foregoing judgment be observed.

GRATIAN. Behold, it is not lawful for parents to break the betrothals of their children. But this is to be understood of those betrothals that are contracted with the children's consent.

Causa XXXII

CASE XXXII.

GRATIAN. A certain man, when he did not have a wife, joined to himself in marriage a certain prostitute who was sterile, the granddaughter of a freeborn man and the daughter of an estate-bound

tenant. When her father wished to hand her over to another man, her grandfather joined her to this man solely on account of incontinence. Then this man, moved by repentance, began to seek children for himself from his own female slave. Afterward, having been convicted and punished for adultery, he asked a certain man to violate his wife by force, so that he might thereby be able to put her away. When this had been done, he joined a certain unbelieving woman to himself, yet under the condition that she would pass to the Christian religion. (Q. I.) Here it is asked first whether a prostitute is lawfully taken as wife. (Q. II.) Second, whether a woman who is taken on account of incontinence is to be called a wife. (Q. III.) Third, whose decision a woman is to follow: that of her free grandfather or that of her estate-bound father. (Q. IV.) Fourth, whether, while his wife is living, it is lawful for someone to seek children from a female slave. (Q. V.) Fifth, whether a woman who suffers force is proved to lose her chastity. (Q. VI.) Sixth, whether an adulterous man can put away an adulterous wife. (Q. VII.) Seventh, whether, while the woman put away is living, he can receive another. (Q. VIII.) Eighth, whether it is lawful for one of the faithful to take an unbelieving woman as wife under the aforesaid condition.

Question I

GRATIAN. PART I. That a prostitute ought not to be taken as wife is proved by many authorities and reasons. For a woman who is proved guilty of adultery ought not to be retained in the fellowship of marriage unless after penance has been completed. Hence John Chrysostom, [that is, the author of the *Incomplete Work*, homily XXXII], says on Matthew c. 9:

C. I. One who refuses to put away his adulterous wife is a patron of shamefulness.

Just as one who puts away a chaste woman is cruel and unjust, so one who retains a prostitute is foolish and unjust. For one who conceals his wife's crime is a patron of shamefulness.

C. II. A man is to put away his wife for the cause of fornication, but is not to take another.

Likewise Jerome, [in the commentary on Matthew c. 19]. The Lord says in the Gospel: "Whoever puts away his wife, except on account of fornication, and takes another, commits adultery; and he who takes the woman put away commits adultery." Fornication alone is that which conquers affection for a wife. Indeed, since she has divided one flesh into another and has separated herself from her husband by fornication, she ought not to be retained, lest she also bring her husband under a curse, as Scripture says: "He who retains an adulteress is foolish and impious." Therefore, wherever there is fornication or suspicion of fornication, the wife is freely put away. And because it could happen that someone might make a false accusation against an innocent woman and, for the sake of a second marital union, impute a crime to the former union, he is commanded to put away the first wife in such a manner that, while the first is living, he does not have a second.

C. III. Only a husband's fornication stains his wife.

The same, on Paul's Epistle to the Corinthians, [1 Cor. 6, in the Ordinary Gloss]. Whatever sins a man placed in marriage commits do not defile his own wife; but fornication pollutes even the wife, so that she is no longer lawful for her husband, but adulterous.

C. IV. One who refuses to put away his adulterous wife is to perform penance for two years if he has rendered her the marital due.

Likewise John Chrysostom. If anyone has found his wife adulterous and thereafter has resolved to have her in marriage, let him perform penance for two years because he has been mingled with an adulteress who has not yet been purified of her crime; or let him abstain from marriage with her until the satisfaction of penance for her crime has been fulfilled, because after satisfaction through penance she does not deserve to be called an adulteress. Similarly, if a wife has found her husband adulterous, she is not judged by unequal standards.

PART II. GRATIAN. It is to be understood: unless the woman should wish to depart from adultery. In that case a man can receive his wife without bringing any danger upon her. Hence Pope Pelagius to Melleus the subdeacon:

C. V. After penance for adultery, a man can receive his wife.

Concerning Benedict also, whom you reported to have carried off another man's wife with a criminal spirit and hitherto to presume to detain her in his own company: if this is the truth of the matter, we command Your Experience not to delay in punishing him strictly together with the adulteress herself, to shave them and separate them from one another, and to cause him to migrate without delay to Lucius the defender on the patrimony in the province of Apulia. But as to her, if perhaps her husband wishes to receive her without any deceit, let him receive her under safeguard through your ordinance, provided that he will bring no danger upon her if she commits nothing similar hereafter. But if he is altogether unwilling to receive her, station her by prudent arrangement in some other place in which it is not lawful for her to live wickedly.

C. VI. One who renders the marital due to an adulteress is to perform penance for three years.

Likewise from the Penitential of Theodore. If anyone knows his wife to be an adulteress and is unwilling to put her away but wishes to have her in marriage, let him perform penance for three years, and let him abstain from her for as long as she performs penance.

C. VII. After adultery has been purged by penance, reconciliation of the marriage can take place.

Likewise Augustine to Pollentius, Book II *On Adulterous Marriages*, [c. 6]. But as to what seems harsh to you—that after adultery a spouse should be reconciled—if faith is present, it will not be harsh. For why do we still reckon as adulterers those whom we believe to have been washed by baptism or healed by penance? In the old law of God these crimes were cleansed by no sacrifices; in the law of the New Testament they are cleansed without sacrifice. And therefore at that time it was altogether prohibited to receive a wife contaminated by another, although David, a prefigurer of the New Testament, received without hesitation Saul's daughter, whom the woman's father had separated from him and given to another. But now, after Christ said to the adulteress, "Neither will I condemn you; go, and from now on sin no more," who does not understand that a husband ought to forgive what he sees that the Lord of both has forgiven? And that he ought no longer to call adulterous a woman whose crime, after she repented, has been blotted out by God?

C. VIII. Concerning the same matter.

The same, *On Adulterous Marriages*. Even after adulteries have been perpetrated and purged, reconciliation of the marriage will be neither shameful nor difficult where it is not doubted that remission of sins occurs through the keys of the kingdom of heaven—not so that, after divorce from her husband—that is, marital separation—an adulteress may be called back, but so that, after fellowship with Christ, she may not be called an adulteress.

C. IX. When the vice of fornication is excluded, the virtue of chastity is taken on.

Likewise Ambrose, [Book II, *On Cain and Abel*, c. 4]. When wickedness is renounced, virtue is immediately taken on. For departure from malice works an entrance of virtue, and by the same endeavor by which crime is excluded, innocence is joined.

C. X. One who returns to truth by repenting is not held deceitful before God.

Likewise Gregory, [homily XXIX on the Gospels]. Before the merciful judge, indeed, not even one who returns to truth after lying will be held deceitful, because almighty God, when he willingly receives our penance, himself conceals by his judgment that in which we erred.

GRATIAN. But if she has chosen to persevere in adultery, the husband will be held a patron of shamefulness and guilty of pandering unless he wishes to bring an accusation of adultery against her. Hence in Book VIII of the *Code*, under the title *On Adultery and Illicit Intercourse*, Emperors Severus and Antoninus say: "Those who have detained in marriage a wife apprehended in adultery contract the crime of pandering, not those who held a wife suspected of adultery."

§ 1. This does not obtain for women. For they are not permitted to bring charges of adultery against their husbands. Hence in the same book and title the same Emperor says: "The Julian law declares that women do not have an accusation of adultery in a public trial, although they may wish to complain of a violated marriage. Although it conferred upon males, by the right of a husband, the faculty of accusing, it did not confer the same privilege upon women."

§ 2. Therefore, if, as is gathered from these authorities, no one is permitted to retain an adulteress, much less will it be lawful to take in marriage a woman for whose chastity no hope is held. For fidelity and the sacrament ought to be preserved between spouses; when these are absent, they are called not spouses but adulterers. Hence Augustine writes against Julian in Book I:

C. XI. The truth of marriage does not consist in the mingling of male and female.

The truth of marriage does not lie solely, as you rave, in the mingling of male and female, although without it marriage cannot procreate children. Rather, there are other things properly pertaining to marriage by which marriages are distinguished from adulteries, such as fidelity to the marital bed, care for procreating children in an ordered manner, and—the greatest difference—the good use of an evil, that is, the good use of the concupiscence of the flesh, which good adulterers use badly.

GRATIAN. These are the goods by which marriages are commended and distinguished from unlawful use.

PART III. But, to the contrary, Ambrose appears to disapprove marriages, saying:

C. XII. By this authority first and second marriages appear to be disapproved.

Marriages fill the earth; virginity fills paradise. But this also must be considered—at least according to the Hebrew truth—that Scripture, after the works of each day had been completed on the first, third, fourth, fifth, and sixth day, said: "And God saw that it was good," but on the second day omitted this altogether, leaving us the understanding that the double number, which divides from unity and prefigures the covenants of marriage, is not good. Hence also in Noah's ark all the animals whatsoever that enter two by two are unclean. The odd number is clean, although in the double number another sacrament is also understood: that second marriage is not approved even among beasts and unclean birds. For the unclean enter two by two, but the clean by sevens, so that after the flood Noah would have something in an odd number that he could immediately offer to God.

GRATIAN. But this refers to an exhortation, not to the necessity of observing virginity. Hence the same Ambrose says, [in the book *Exhortation to Virgins*]:

C. XIII. Virginity is advised by counsel; it is not commanded by authority.

Integrity of body is to be sought by us. I advise it as counsel; I do not command it by authority. For virginity alone is that which can be advised but cannot be commanded; it is a matter more of a vow than of a precept.

PART IV. GRATIAN. Since, therefore, as we have said, there is no hope of fidelity in a prostitute and no certainty of chastity, it is evident that she is not to be taken in marriage.

§ 1. But it is objected: although Rahab of Jericho was a prostitute, she was nevertheless joined in marriage to a prince of the tribe of Judah, from whom Christ also afterward deigned to be born. Hosea also, the first of the twelve Prophets, at the Lord's command bought a prostitute for a cor of barley and associated her with himself in marriage. But it is one thing to take a prostitute, or to retain an adulteress, whom you adorn with chastity and modesty by your manner of life; it is another to have one of them whom you are able by no agreement to recall from the wantonness of her flesh. For the latter is utterly prohibited; the former is read to have been done laudably. Hence Jerome on Hosea, Book I, [on c. 1]:

C. XIV. It is not a sin to take a prostitute as wife.

The prophet Hosea is not to be blamed if he converted the prostitute whom he took to chastity; rather, he is to be praised because he made a good woman from an evil one. For one who remains good is not polluted if he is associated with an evil person; rather, one who is evil is turned to good if that person follows the examples of the good. From this we understand that the Prophet, when joined to a prostitute, did not lose chastity, but that the prostitute assumed the chastity which she did not have before.

Question II

GRATIAN. PART I. That a woman who is taken solely on account of incontinence is not a wife appears capable of proof from this: marriage was instituted by God for the sake of propagation, not

for satisfying lust. For this was the blessing of marriage: "Increase and multiply." Hence Ambrose on Luke, [Book I, on c. 1]:

C. I. Childbearing is women's sole cause for marrying.

It is a shame for women not to have the rewards of marriage, for whom this is the sole cause of marrying.

The same, [at the beginning of Book II]. § 1. Since childbearing is the reward of marriage and the grace of nuptials for women, it is no slight reason that Mary's virginity should deceive the prince of the world.

GRATIAN. Therefore, those who are joined to one another not for the sake of procreating offspring but of satisfying lust appear not so much spouses as fornicators. Hence Jerome also, [on Ephesians c. 5]:

C. II. Those who are not joined according to the precepts of Christ are called not spouses but adulterers.

Just as not every congregation of heretics can be called the Church of Christ, nor is Christ their head, so not every marriage in which a woman is not joined to her own husband according to the precepts of Christ can rightly be called a marriage, but rather adultery.

PART II. GRATIAN. To these things it is answered thus: The first institution of marriage was made in paradise, so that the bed might be undefiled and the nuptials honorable, from which women would conceive without ardor and give birth without pain. The second was made outside paradise to eliminate unlawful movement, so that weakness, prone to fall into shamefulness, might be received by the honorable state of marriage. Hence the Apostle, writing to the Corinthians, says: "Because of fornication, let each man have his own wife, and each woman her own husband." From this cause, therefore, it happens that married persons owe themselves to one another and cannot deny themselves to one another. Hence the Apostle says: "Do not defraud one another, except perhaps by consent and for a time, so that you may more readily devote yourselves to prayer; and return again to the same thing, lest Satan tempt you. But I say this because of your incontinence." Therefore, those who because of incontinence are admonished to return to natural use are clearly not commanded to mingle solely for the procreation of children.

§ 1. Nevertheless, marriages are not therefore judged evil. For what is done apart from the intention of begetting is not an evil of marriage, but is venial because of the good of marriage, which is threefold: namely, fidelity, offspring, and sacrament. Hence Augustine, *On the Good of Marriage*, [c. 6]:

C. III. The immoderate use of married persons is not an evil of marriage, but is venial because of the good of marriage.

Whatever immoderate, immodest, or sordid thing married persons conduct between themselves is a vice of human beings, not a fault of marriage. Even in the immoderate exaction of the carnal due itself, which the Apostle does not command them by authority but concedes by indulgence, so that they may mingle with one another even apart from the cause of procreation, although depraved morals impel them to such intercourse, marriage nevertheless defends them from adultery or fornication. Nor is that admitted because of marriage; rather, it is forgiven because of marriage.

Therefore, married persons owe to one another not only fidelity in the mingling of their sex for the sake of procreating children—which is the first society of the human race in this mortality—but also a kind of mutual servitude for receiving one another's weakness, in order to avoid unlawful intercourse, so that, even if perpetual continence pleases one of them, it cannot occur except by the other's consent.

PART III. GRATIAN. But the presence of the Holy Spirit is not given during the time in which marital acts are performed. Hence Jerome on Matthew:

C. IV. The presence of the Holy Spirit is not given during the time in which marital acts are performed.

Lawful marriages indeed lack sin; nevertheless, at that time in which marital acts are performed, the presence of the Holy Spirit will not be given, even if one who attends to the duty of generation appears to be a prophet. But there are also many other things in which human power alone suffices for itself, and the matter neither needs nor is fitting for the presence of the Holy Spirit to attend.

GRATIAN. Therefore, just as such intercourse is not fornicatory but lawful because of the good of marriage, so also that union about which the question is asked is not fornicatory but lawful because of the good of marriage. Likewise, as Augustine says in the book *On the Good of Marriage*, [c. 14]:

[C. V.]

"Concubines taken for a time do not make their concubinage just, not even if they have intercourse for the sake of children."

PART IV. [GRATIAN.] Thus, to the contrary, it is given to be understood concerning those who are joined to one another with marital affection that, even if they come together not for the sake of procreating children but of satisfying lust, they are not for that reason called fornicators, but spouses. This same thing is proved by the authority of Augustine in the book *On the Good of Marriage*, [c. 5]:

C. VI. Those who are joined to one another solely on account of incontinence are spouses.

It is customary to ask: when a male and female, neither he the husband nor she the wife of another, are joined to one another not for the sake of procreating children but solely for intercourse on account of incontinence, with this pledge between them—that neither he will do this with another woman nor she with another man—are these to be called nuptials? And perhaps it can indeed not absurdly be called a marriage if this has pleased them until the death of one of them, and if they have nevertheless not avoided the generation of offspring, although they were not joined for that cause, so that they either do not wish children to be born to them or employ some evil work so that they are not born. But if either both or one of these things is absent, I do not find how we can call these nuptials. For if a man has taken some woman to himself for a time, until he finds another worthy of his honors or his resources whom he may take in marriage, he is an adulterer by that very intention—not with the woman whom he desires to find, but with this woman with whom he lies in such a way that he does not have marital fellowship with her.

C. VII. Those who procure poisons of sterility are fornicators, not spouses.

The same, *On Marriage and Concupiscence*, [Book I, c. 15]. Sometimes this lustful cruelty, or cruel lust, reaches such a point that it even procures poisons of sterility and, if these have accomplished nothing, by some means extinguishes or expels the fetuses conceived within the womb, willing that its offspring perish before living, or, if it was living in the womb, that it be killed before being born. Assuredly, if both are such, they are not spouses; and if they were such from the beginning, they came together not by marriage but rather by illicit intercourse. But if both are not such, I dare to say that either she is in some manner the prostitute of her husband, or he the adulterer of his wife.

PART V. GRATIAN. Concerning those who procure abortion, it is asked whether they are judged murderers or not. Augustine in the book *Questions on Exodus*, [question LXXX], says:

C. VIII. One who procures abortion before the soul is infused into the body is not a murderer.

But in not willing unformed offspring to pertain to homicide, he certainly did not reckon as a human being that which is carried in the womb in such a state. Here the question concerning the soul is customarily discussed: whether whatever is not formed can be understood not yet to be ensouled, and therefore whether it is not homicide, because it cannot be said to have been deprived of a soul if it did not have a soul.

Likewise: § 1. If that unformed offspring indeed already existed but was still ensouled in some unformed manner—since the great question concerning the soul is not to be rushed by the unexamined rashness of a judgment—the law therefore did not wish it to pertain to homicide, because it cannot yet be called a living soul in a body that lacks sensation.

[C. IX.]

The same, in the book *Questions of the Old and New Testament*, [c. 23]. Moses handed down: "If anyone strikes a woman carrying in the womb and causes an abortion, if it was formed, let him give a life for a life; but if it was unformed, let him be fined with money," to prove that there is no soul before form. Therefore, if it is given to a body already formed, it is not born at the body's conception, derived with the seed. For if a soul exists from a soul together with the seed, many souls perish every day when seed, by some discharge, does not advance to birth. But if we look first, we will see what we ought to follow. Let us contemplate the formation of Adam. For in Adam an example was given so that from it it may be understood that a body already formed received a soul. For God could have mingled a soul with the clay of the earth and formed the body in this way. But this would be weakened by reason, because first the house had to be fitted together, and thus the inhabitant brought in. The soul certainly, because it is spirit, cannot dwell in what is dry, and therefore is reported to dwell in the blood. Therefore, when the outlines have not been fitted together, where will the soul be?

[C. X.]

Likewise Jerome to Algasia, [question IV]. Just as seeds are gradually formed in the womb, and it is not reckoned homicide until the elements, once completed, receive their shapes and limbs, so a

thought conceived by reason, unless it breaks forth into works, is still retained in the womb and quickly perishes by the enemy.

PART VI. GRATIAN. Therefore, since one who takes some woman to himself for a time is said to be an adulterer with her, he does not sin by departing from her, nor does one sin by handing one's daughter over to him. Hence Pope Leo, [to Rusticus, bishop of Narbonne, epistle XC, otherwise XCII, cc. 5 and 6]:

C. XI. To cast off a fornicator and receive a lawful wife is an advance in honorable conduct.

To cast a female slave from the bed and receive a wife of certain freeborn status is not a doubling of marriage but an advance in honorable conduct.

§ 1. Indeed, let the negligence of such persons be blamed, but not utterly despaired of, so that, stirred by repeated exhortations, they may faithfully carry out what they sought by necessity. For no one is to be despaired of while established in this body, because sometimes what is deferred by the diffidence of age is completed by more mature counsel.

C. XII. A woman who is handed over to a man having a concubine is joined in lawful marriage.

The same, [in the same place, c. 4]. Not every woman joined to a man is the man's wife, because not every son is his father's heir. But the covenants of marriage are lawful between freeborn persons and between equals, and this was so much earlier, when the Lord himself established it, than the beginning of Roman law existed. Accordingly, a wife is one thing and a concubine another, just as a female slave is one thing and a free woman another.

§ 1. For this reason the Apostle also, to make clear the distinction between these persons, set down a testimony from Genesis, where it is said to Abraham: "Cast out the female slave and her son, for the son of the female slave will not be heir with the son of the free woman."

§ 2. Therefore, if a cleric of any place has given his daughter in marriage to a man having a concubine, it is not to be understood as though he had given her to a married man, unless perhaps that woman is seen both to have been made freeborn, lawfully endowed, and honored by public nuptials.

§ 4. Women joined to men by their father's decision are without fault if the women who were kept by the men were not in marriage, because a wife is one thing and a concubine another.

PART VII. GRATIAN. When it is said, "women joined to men by their father's decision," it is given to be understood that paternal consent is desired in nuptials, and that without it nuptials are not held lawful, according to that saying of Pope Evaristus: "A marriage is not made lawful otherwise than if she is handed over by her parents."

[C. XIII.]

Likewise Ambrose in the book *On the Patriarchs*, [that is, Book I, *On Abraham*, final chapter]. "Rebecca's parents are honored with gifts; the girl is consulted not about the betrothal—for she awaits the judgment of her parents, since it does not belong to virginal modesty to choose a husband—but, when already betrothed to a man, she is consulted concerning the day of departure, and not

without cause did she offer no delay. For by right she ought to hasten to her husband. Hence it is manifest whence that saying of Euripides, whose source many wonder at, has been translated. For he says in the person of a woman who nevertheless wished to leave her husband and was being sought for another marriage: 'My father will undertake the care of my betrothal. For this is not mine.' Therefore, virgins, preserve what even the philosophers themselves have admired. But also, if some young woman, having quickly lost her husband, fears that she may fall into the snare of her weakness, if she wishes to marry, let her marry, only in the Lord, so that she may defer the choice of a husband to her parents, lest she be reckoned the author of desire if she claims for herself the choice concerning her own marriage. She ought to appear rather to have been sought by a man than herself to have sought a man. Let her send modesty before her before she marries, so that modesty may commend the marriage itself all the more."

[C. XIV.]

Likewise in the Book of Numbers, [c. XXX, v. 4 and following]. "If a woman makes any vow and binds herself by an oath while she is in her father's house and still of girlhood age, if her father learns of the vow she promised and the oath by which she bound her soul, and remains silent, she will not be guilty; whatever she promised and swore she will fulfill in deed. But if her father contradicts her immediately when he hears it, both her vows and her oaths will be void, nor will she be held liable to the promise, because her father contradicted it."

[C. XV.]

Augustine, [question LVII on Numbers]. "Deservedly, the question is asked here also concerning a vow of virginity. For in Scripture even virgins are customarily called women, and the Apostle also appears to speak of a father when he says: 'Let him keep his virgin,' and: 'Let him give his virgin in marriage.'"

To the contrary, in the Third Council of Toledo, [c. 10]:

C. XVI. Let widows and virgins choose husbands for themselves by their own will.

This holy council affirms that widows whom it has pleased may maintain chastity. But if, before they profess continence, they have chosen to marry, let them marry those whom they wished by their own will to have as husbands. Let a similar condition also be maintained concerning virgins, and let them not be compelled to receive husbands contrary to the will of their parents or their own. But if anyone impedes the purpose of chastity of a widow or virgin, let him be held a stranger from holy communion and from the thresholds of the church.

GRATIAN. By the foregoing authorities it is clearly asserted that, although some come together not for the sake of procreating children but because of incontinence, they are nevertheless called spouses.

Question III

GRATIAN. Concerning the third question, Pelagius determines the matter, writing to Potentius the defender:

SOLE CHAPTER. A girl ought in marriage to follow the decision of her free grandfather, not that of her estate-bound father.

It is established that the girl's father is a servant of your church, but her grandfather was born of free parents; and therefore we decree that greater regard is to be given to the grandfather's choice concerning the union of his granddaughter than to that of her father, whose decision can in no way be free.

GRATIAN. Therefore, because this woman is proved to have married this man by the choice of her grandfather, it is established that she was lawfully joined to him.

Question IV

GRATIAN. That it is lawful for someone to seek children from a female slave because of his wife's sterility is proved by the example of Abraham, who, because of the sterility of his wife Sarah, went in to Hagar the Egyptian so that he might receive children from her. Likewise Jacob, when he could not have children from Rachel, raised up children for himself from her female slave; and not only because of sterility, but also because fertility had ceased, he is read to have gone in to Leah's female slave and to have begotten children from her. From all these things it is gathered that because of a wife's sterility children may lawfully be sought either from a female slave or from any other woman; otherwise Abraham and Jacob will be marked with the stain of adultery. But just as, after Sarah's death, Abraham took Keturah as wife so that, according to Augustine, Christians might not think it a sin to take another after a wife's death, so he appears to have received children from a female slave while his wife was living, lest this be reckoned a crime by some. But that saying of Augustine is found in Book II *Against the Adversary of the Law and the Prophets*, [c. 9]:

C. I. How Abraham is excused from the crime of fornication.

This man also objects against Abraham the crime of fornication even into the decrepit age of old age, evidently because he took another wife even after Sarah's death. Here, even if no sacrament of a hidden matter were understood, Abraham ought to have done this for this reason alone: lest the heretics who oppose the people of God—among whom Tertullian also stands as a supporter—think that it is a crime to take a wife after a wife's death.

GRATIAN. The sacrament of this matter is that through good persons the evil and good were to be begotten in faith, and through evil persons the good and evil were to come to the faith. Hence Augustine on John, [tractate XI]:

C. II. Just as the evil and good are begotten in faith through the ministry of good persons, so the good and evil are begotten through the ministry of evil persons.

Let your mind now return to Abraham, Isaac, and Jacob. In these three we find free women giving birth; we find female slaves giving birth. There we find offspring of free women; there we find offspring of female slaves. A female slave signifies nothing good. "Cast out the female slave," he says, "and her son."

§ 1. We find a wondrous matter in these generations of free women and female slaves: namely, four kinds of human beings. In these four kinds the figure of the whole Christian people is fulfilled, so

that it is no wonder that concerning those three it was said: "I am the God of Abraham, and the God of Isaac, and the God of Jacob." For among all Christians—brothers, attend—either good persons are born through evil persons, or evil persons are born through good persons, or good through good, or evil through evil. Beyond these four kinds nothing can be found.

§ 2. There you find good sons of Jacob born from female slaves and good sons born from free women. Birth from the wombs of female slaves did not harm them when they recognized their seed in their father and consequently held the kingdom with their brothers. Therefore, just as in the sons of Jacob it did not harm those who were born from female slaves so as to prevent them from holding the kingdom and the land of promise which they received with their brothers—their birth from female slaves did not harm them, but the paternal seed prevailed—so all who are baptized through evil persons appear to have been born, as it were, from female slaves; nevertheless, because they are from the seed of the word of God, which is figured in Jacob, they will possess the inheritance together with their brothers. Therefore, let one who is born from good seed be secure; only let him not imitate the female slave. If you are born from a female slave, do not imitate the evil, proud female slave. For why did the sons of Jacob born from female slaves possess the land of promise with their brothers, while Ishmael, born from a female slave, was expelled from the inheritance? Why, unless because he was proud and they humble? He raised his neck and wished to seduce his brother, playing with him. A great sacrament is there. Ishmael and Isaac were playing together; Sarah saw them playing.

§ 3. She who bore Abel, Enoch, Noah, and Abraham herself bore Moses and the Prophets who came later in time before the Lord's advent; and she who bore them herself bore the Apostles, our martyrs, and all good Christians. For she bore all who appeared born at different times but are contained in the fellowship of one people, and who, as citizens of the same city, experienced the labors of this pilgrimage; some of them experience them now, and the rest will experience them until the end. Likewise she who bore Cain, Ham, Ishmael, and Esau herself bore Dathan and others like them among the same people; and she who bore them herself bore Judas the false apostle, Simon Magus, and all other false Christians down to these times, obstinately hardened in an animal affection, whether they are mingled within unity or dissent by open separation.

§ 4. But when such persons are evangelized by spiritual persons and imbued with the sacraments, Rebecca, as it were, bears them through herself, as she did Esau. But when such persons are begotten among the same people through those who do not proclaim the Gospel chastely, Sarah does not indeed bear through herself, but through Hagar. Likewise, when good spiritual persons are begotten by carnal persons who evangelize or baptize, Leah or Rachel indeed bears them by marital right, but through the womb of the female slaves.

§ 5. But when through spiritual persons good believers are begotten in the Gospel—who either advance into a spiritual affection of piety, or do not cease striving toward it, or do not do so for this reason, because they cannot—they are born into the new life and New Testament as Isaac from Sarah's womb or Jacob from Rebecca's. Therefore, whether they appear to dwell within or are openly outside, what is flesh is flesh. Whether they persevere on the threshing floor in their sterility or are carried outside on the occasion of temptation as though by the wind, what is chaff is chaff. And even one who in carnal obduracy is mingled with the congregation of the saints is always divided from the unity of that Church which is without spot or wrinkle. Nevertheless, one must despair of no one, whether such a person appears within or more manifestly opposes from without.

PART II. GRATIAN. To these things it is answered thus: According to the diversity of times, a diverse dispensation of the Creator is found. It had been promised to Abraham that all nations would be blessed in his seed; he had also promised that he would give to his seed the land of his sojourn. Therefore, since, with the others left in idolatry, the Lord had chosen Abraham and his sons as a peculiar people for himself, the multiplication of God's people was rightly sought through the fertility of many women, because in succession of blood there was succession of faith. Hence it was said in the law: "Cursed is the sterile woman who has not left her seed upon the earth." Hence marriages were also decreed for priests, because in the succession of the family the succession of office was established. But because through the incarnation of Christ the grace of faith has been spread everywhere, and it is no longer said, "Speak to the house of Judah and the house of Israel," but "Go, teach all nations," and "In every nation, whoever fears God and works justice is acceptable to him," the choice for an office is not sought in succession of lineage, but in perfection of life and sincerity of knowledge; virginity is preferred to fertility, and the chastity of continence is commanded to priests. Therefore, neither Abraham nor Jacob sinned because he sought children from a female slave in addition to his wife, nor by their example is it lawful for anyone to seek fertility in some woman in addition to the marital due, since their marriages are equated with or preferred to our virginity, and the immoderate use of marriage in our time almost imitates the shamefulness of fornication in that time. Hence Ambrose writes in the book *On the Patriarchs*, [Book I, *On Abraham*, c. 4]:

C. III. Abraham, who received children from a female slave while his wife was living, is not guilty of adultery.

Sarah said to Abraham: "Behold, the Lord has closed me up so that I do not bear; therefore, go in to my female slave so that you may make a son from her." And so it was done. But consider first that Abraham lived before the law of Moses and before the Gospel; adultery did not yet appear to be prohibited. The penalty for a crime exists from the time of the law that prohibited the crime; before the law there is no condemnation of a guilty person, but it comes from the law. Abraham therefore did not commit against the law, but preceded the law. God had praised marriage in paradise; he had not condemned adultery.

§ 1. You have Abraham's first defense. The second is this: not inflamed by any ardor of wandering lust, not captivated by the beauty of an alluring form, did he place the marital bed after union with a female slave, but from zeal for seeking posterity and propagating offspring. There was still, after the flood, a scarcity of the human race; there was also a scarcity of religion, lest anyone appear not to have rendered the debt owed to nature. Finally, the daughters of holy Lot had this cause of seeking posterity, lest the human race fail; and therefore the grace of a public duty covered over a private fault.

C. IV. What is committed outside lawful marriage is condemned as the crime of adultery.

The same, in the same work, [in the chapter of the book]. Let no one flatter himself concerning human laws. Every illicit intercourse is adultery, nor is that lawful for a man which is not lawful for a woman. The same chastity is owed by a husband as by a wife. Whatever is committed with a woman who is not a lawful wife is condemned as the crime of adultery.

In the same work, [Book I, c. 7]. § 1. It is lawful for no one to know a woman except his wife. Therefore, the right of marriage has been given to you lest you fall into a snare and sin with another woman.

§ 2. A fault is more tolerable if it lies hidden than if authority is usurped for the fault. Nor is adultery only to sin with another man's wife, but everything that does not have the authority of marriage. Nevertheless, this passage teaches that the crime is more grave where the rights of a celebrated marriage are violated and the wife's modesty is undone. Therefore, when Abimelech claimed that he had not known her to be another man's wife, since the husband himself had said that she was his sister, the Lord answered him: "And I knew that you did this with a pure heart, and I spared you so that you would not sin against me; for this reason I did not permit you to touch her." We recognize God to be, as it were, the protector and guardian of marriage, who does not permit another's bed to be polluted; and if anyone does this, he sins against God, whose law he violates and whose grace he dissolves. And because he sins against God, he loses fellowship in the heavenly sacrament.

C. V. Nothing is more shameful than to love one's wife as though she were an adulteress.

Likewise Jerome, [Book I *Against Jovinian*]. PART III. The origin of the love was indeed honorable, but its magnitude was deformed.

§ 1. It makes no difference from what honorable cause someone goes mad. Hence Sextus also says in his *Sentences*: "A man who is too ardent a lover of his own wife is an adulterer toward her." Indeed, all love for another man's wife is shameful; excessive love for one's own wife is shameful. A wise man ought to love his spouse by judgment, not by passion. The impulse of pleasure does not reign in him, nor is he carried headlong toward intercourse. Nothing is more shameful than to love one's wife as though she were an adulteress.

§ 2. Certainly, those who say that they are joined to wives for the sake of the commonwealth and the human race and to procreate children should at least imitate the beasts; and after the belly of the wife has swollen, let them not destroy the children, nor present themselves to their wives as lovers, but as husbands.

C. VI. Virginal chastity is not preferred to the marriage of Abraham.

The same, [Book II]. Who does not know that, under a different dispensation of God in former times, all his saints were of the same merit as Christians now are? Just as Abraham then pleased in marriage, so now virgins please in chastity. He served the law and his own time; let us also serve the law and our own time, upon whom the ends of the ages have come.

C. VII. The Patriarchs had several wives not from a desire to satisfy lust but for the sake of numerous offspring.

Likewise Augustine, [Book XXII *Against Faustus*, cc. 47 and 48]. Jacob's four wives are objected against him, although what was customary at that time was not a crime. Just as the Patriarchs mingled with their spouses, who received their seed, not from a desire to perfect pleasure but from providence for propagating succession, so the Apostles took delight together with hearers who admired their teaching, not from a greed to obtain praise but from charity for sowing truth.

C. VIII. It is better to die without children than to seek offspring from unlawful intercourse.

Likewise Augustine, *On the Good of Marriage*, [c. 16]. PART IV. Just as it is better to die from hunger than to eat things sacrificed to idols, so it is better to die without children than to seek offspring from unlawful intercourse. But from wherever human beings are born, if they do not follow the vices of their parents and worship God rightly, they will be honorable and saved. For the seed of a human being, from whatever human being it comes, is God's creature; it will go badly for those who use it badly, but it will never itself be evil.

C. IX. Children are not to be sought from a female slave.

Likewise a sermon of Saint Ambrose concerning Saint John which begins, "We said on the preceding Lord's Day," [no. LXV]. Someone may say: I do not have a wife, and therefore I have associated a female slave with myself. Hear what Scripture says to Abraham: "Cast out the female slave and her son; for the son of the female slave will not be heir with the son of the free woman." Therefore, if the son of the female slave is not an heir, neither, then, is he a son. But why is such a union sought, from which the son received can be heir neither by succession nor by blood? For one who does not have the privilege of origin cannot have fellowship in the inheritance. Why, I ask, is such an informal union sought, from which the children born are witnesses not of marriage but of adultery? Why are adulterous children of this kind received, who are a shame to the father, not an honor? Scripture says: "The children of adulterers, etc." Therefore, if your woman is furnished with such morals that she deserves fellowship, let her also deserve the name of wife. Grant your concubine freedom and the name of wife, lest you be her adulterer rather than her husband.

C. X. Adulteries are not to be committed with the will of begetting children.

Likewise Augustine to Claudius, Book V *Against Julian*. Adulteries are not to be committed even with the will of begetting children, just as thefts are not to be committed even with the will of feeding the holy poor. The latter is nevertheless to be done not by perpetrating thefts, but by making good use of the mammon of iniquity.

PART V. GRATIAN. Behold, it is in no way lawful for someone, while his wife is living, to seek children either from a female slave or from any other woman; those received are even judged unworthy of the name of children. Simple fornication is also prohibited by sacred Scripture. Hence Augustine in *Questions on Deuteronomy*, [question XXXVII on c. 23]:

C. XI. Unlawful intercourse and every illegitimate use of those members is understood by the name of adultery.

The Lord prohibits there being prostitutes and approaching prostitutes, whose shamefulness is publicly for sale. But in the Decalogue he does not appear openly to have prohibited this under the name of adultery, since adultery is customarily understood only as a violation of marriage.

The same, on Exodus, [question 71]. § 1. Every adultery is also called fornication in the Scriptures. But whether every fornication can also be called adultery, no example of this manner of speaking occurs to me in the same Scriptures for the present. But if every fornication cannot also be called adultery, I do not know whether it can be found where in the Decalogue that fornication is prohibited

which men who do not have wives commit with women who do not have husbands. But if under the name of theft every unlawful usurpation of another's property is rightly understood—for he who prohibited theft did not permit robbery, but certainly wished the whole to be understood from a part: whatever of a neighbor's property is unlawfully taken—assuredly under the name of adultery every unlawful intercourse and illegitimate use of those members ought to be understood as prohibited.

C. XII. Extraordinary pleasure and immodest acts of marriage are called wantonness and uncleanness.

Likewise Jerome, [on Galatians c. 5, at "But manifest"]. In this the fornicator is guilty of a greater crime: he takes the members of Christ and makes them members of a prostitute, "for the two shall be in one flesh." One who is not faithful and does not believe in Christ makes his own members the members of a prostitute. To the contrary, whether an unbeliever in his fornication violates or builds a temple for an idol, I do not know. For demons are especially worshiped through vices. This one thing I know: one who fornicates after receiving the faith of Christ violates the temple of God. The second work of the flesh is called uncleanness, and wantonness follows it as its companion. For just as in the old law Scripture comprehended generally the unspeakable crimes that are done in secret, which it is most shameful even to name, lest both the speaker's mouth and the hearers' ears be polluted, saying: "Make the children of Israel modest or fearful of every uncleanness," so in this passage he called the other extraordinary pleasures—and also the acts of marriage themselves, if they are not done modestly and honorably, as though under God's eyes, so that service is rendered only to children—uncleanness and wantonness.

C. XIII. The immoderate use of women drew Solomon to idolatry.

Likewise Gregory, [*Morals*, Book XII, c. 12]. Solomon indeed was brought by the immoderate use and constant company of women to such a point that he built a temple for idols; and he who had formerly constructed a temple for God, prostrated beneath constant lust and unbelief, did not fear to construct temples for idols.

C. XIV. The procreation of children is praised in marriage; pleasure characteristic of prostitutes is condemned even with a wife.

Likewise Jerome, [on Ephesians c. 5, at "Husbands, love"]. Therefore, as we have said, acts for the sake of children have been conceded in marriage; but pleasures taken from the embraces of prostitutes are condemned even with a wife.

PART VI. GRATIAN. But why such persons are not called children, or which of their parents those who are born from a free man and a female slave follow, Isidore determines in Book IX of the *Etymologies*, [c. 5]:

C. XV. Who are free children, and which condition of their parents they follow.

Those are called free children who were born of a free marriage. For children of a free man and a female slave are of servile condition. For one who is born always takes the worse part. But natural children are said to be the children of freeborn concubines, whom nature alone, not the honorable state of marriage, begot.

§ 1. But those who are not from a lawful marriage follow the mother rather than the father.

Question V

GRATIAN. PART I. That chastity cannot be taken away by violence is proved by the authorities of many. For it is a virtue of the mind, which does not experience violence. Indeed, force is brought upon the body, not upon the mind. Hence, although the body is violated by force, if chastity of mind is preserved unharmed, chastity is nevertheless doubled. Thus blessed Lucy is reported to have said to Paschasius: "If you cause me to be violated against my will, my chastity will be doubled for my crown." For God judges concerning perceptions and wills. Hence Ambrose writes in Book V *On Virgins*:

C. I. Virginity of mind is better than virginity of flesh.

It is more tolerable to have the mind virgin than the flesh. Both are good, if it is permitted; if it is not permitted, let us at least be chaste not for a human being but for God.

§ 1. A virgin can be prostituted; she cannot be made an adulteress. Wherever a virgin of God is, there is a temple of God. Brothels do not bring infamy upon chastity; rather, chastity abolishes even the infamy of the place.

C. II. When the mind is uncorrupted, the flesh is not corrupted.

The same, [*To a Fallen Virgin*, c. 4]. Truly, the flesh cannot be corrupted beforehand unless the mind has first been corrupted.

C. III. Another's lust pollutes no one.

Likewise Augustine, *The City of God*, [Book I, c. 18]. Is there fear, then, that another's lust may pollute someone? It will not pollute if it is another's; but if it pollutes, it will not be another's. But since chastity is a virtue of the mind and has fortitude as its companion, it determines to tolerate any evils rather than consent to evil. And since no magnanimous and chaste person has in that person's power what is done to the flesh, but only what the mind assents to or refuses, who, then, being of sound mind, would think that one loses chastity if perhaps another's lust, not one's own, is exercised and satisfied upon one's flesh after it has been seized or overpowered?

[C. IV.] The same, [in the same place].

When the purpose of the mind remains—the purpose through which the body also merited to be sanctified—the violence of another's lust does not take sanctity from the body itself, for the perseverance of its own continence preserves it. Or indeed, if some woman, corrupted in mind and having violated the purpose she vowed to God, proceeds to be violated by her seducer, do we still call her holy even in body while she proceeds, after the sanctity of the mind through which the body is sanctified has been lost and destroyed? Far be this error. And from this let us rather be admonished that the sanctity of the body is thus lost even when the body is untouched.

The same, [c. 19]. § 1. They extol Lucretia, a noble matron of ancient Rome, with great praises of chastity. When the violent son of King Tarquin had lustfully taken possession of her body, she disclosed the most wicked young man's crime to her husband Collatinus and her kinsman Brutus,

most illustrious and brave men, and bound them to vengeance. Then, sickened by and unable to endure the shameful deed committed against her, she killed herself. What do we say? Is she to be called an adulteress or chaste? Who will labor in this controversy? Someone declaiming on this matter excellently and truthfully said: "Wonderful to say: there were two, and one committed adultery." Splendidly and most truthfully. For, looking in the mingling of two bodies at the most defiled desire of one and the most chaste will of the other, and attending not to what was done by the joining of bodies but to what was done by the diversity of minds, he says: "There were two, and one committed adultery."

[PALEA.

C. V. The same, in the same book, chapter 27.

Let your life not become wearisome to you who are faithful to Christ if your chastity was made a mockery by enemies. You have a great and true consolation if you retain a faithful conscience that you did not consent to the sins of those who were permitted to sin against you.

The same, in the book *On Two Souls*, [c. 10]. § 1. Sin is committed only by the will.]

[C. VI.]

The same, in Book I *On Free Choice*, [c. 5]. Concerning chastity, who has doubted that it is established in the mind, since it is a virtue? Hence it cannot itself be taken away even by a violent ravisher.

Likewise Jerome, on the Epistle to the Romans, Book I. § 1. It is impossible for anyone to commit adultery in the body unless that person first commits adultery in the heart.

[PALEA. The same, on Luke, Book II. § 2. Imagine that in a persecution some virgin has been prostituted. According to the Gospel she is received as a virgin, because she does not sin by her will; under the law she is repudiated as though corrupted.

The same, in the book *Hebrew Questions*, [on Genesis at c. 12]. § 3. Force does not stain a woman's body, but the will.]

Likewise Augustine, in the book *On Holy Virginity*, [c. 8]. § 4. Just as no one uses the body immodestly unless wickedness has first been conceived in the spirit, so no one preserves chastity in the body unless chastity has first been implanted in the spirit.

C. VII. Chastity cannot be violated in the body if the mind is preserved inviolate.

The same, to Victorianus, [epistle CXXII]. He who is accustomed to be present to his own will surely be present to those of his own who groan to God. Either he permits nothing to be perpetrated upon their most chaste members by hostile lust, or, if he permits it, since their mind is stained by no shamefulness of consent, they defend even their own flesh from blame. Whatever the lust of the sufferer neither committed nor permitted in it will belong solely to the fault of the doer, and all that violence will be reckoned not as the shamefulness of corruption but as the wound of suffering. For the integrity of chastity has such great force in the mind that, while it remains inviolate, chastity cannot be violated even in the body whose members could be overcome.

C. VIII. The flesh does not sin if the soul has been clean from contamination.

Likewise Isidore, in the *Synonyms*, Book II, [c. 1]. The body cannot be corrupted unless the mind has first been corrupted. For flesh clean from contamination of the mind does not sin.

C. IX. Chastity of the flesh is not taken away if it is preserved in the mind.

Likewise Augustine to Bishop Honoratus, [epistle CLXXX]. Let us fear more that the chastity of faith may perish when the interior perception has been corrupted than that women may be violated by force in the flesh, because chastity is not violated by violence if it is preserved in the mind. For it is not violated even in the flesh when the will of the sufferer does not use the flesh shamefully, but without consent endures what another does.

C. X. Neither sin nor justice is perfected by a work without the will.

Likewise John Chrysostom, [that is, the author of the *Incomplete Work*], on Matthew, [homily XXXII on c. 19]. Just as a work does not make sin without the will, so also justice is not consummated from a work unless the will is present. For many indeed pursue chastity in the body but commit adultery by the will, since the Lord says: "He who looks upon a woman to desire her has already committed adultery with her in his heart." Therefore, the will frequently sins without a work. That, therefore, is glorious continence—not one which the necessity of bodily weakness is unable to transgress, but one which the will of a holy purpose embraces.

C. XI. Virginity of the flesh is not preserved when the mind is corrupted.

Likewise Jerome, in the epistle to Eustochium, [*On the Preservation of Virginity*]. PART II. If the Apostle Paul, a vessel of election and prepared for the Gospel of Christ, on account of the goads of the flesh and incitements of vices restrains his body and subjects it to servitude, lest, while preaching to others, he himself be found reprobate, and nevertheless sees another law in his members fighting against the law of his mind and taking him captive in the law of sin; if, after nakedness, fasts, hunger, prisons, scourges, and torments, returning into himself he cries out, "Unhappy man that I am, who will deliver me from the body of this death?"—do you think that you ought to be secure? Beware, I ask, lest God at some time say also concerning you: "The virgin of Israel has fallen, and there is no one to raise her." I will say boldly: although God can raise all things, he cannot make a virgin after a fall. He is indeed able to deliver her from punishment, but he is not able to crown one who has been corrupted.

§ 1. Let us fear lest that prophecy also be fulfilled in us: "And good virgins will fail." Observe what he says: "And good virgins will fail," because there are also evil virgins. "He who looks upon a woman to desire her," he says, "has already committed adultery with her in his heart." Therefore, virginity also perishes in the mind. These are evil virgins: virgins in flesh, not in spirit; foolish virgins who, not having oil, are excluded by the bridegroom. But if even those who are virgins are nevertheless not saved by the virginity of their bodies because of other faults, what will happen to those who prostituted the members of Christ and changed the temple of the Holy Spirit into a brothel? Immediately they will hear the prophet saying: "Descend, sit upon the earth, virgin daughter of Babylon; sit upon the earth. There is no throne for the daughter of the Chaldeans; you will no longer be called tender and delicate. Take the millstone, grind flour, uncover your veil, bare your legs, cross

the rivers; your disgrace will be revealed, your reproaches will appear." And this after the bridal chamber of the Son of God, after the kisses of the kinsman and bridegroom. She concerning whom the prophetic discourse once sang, "The queen stood at your right hand in gilded clothing, surrounded with variety," will be stripped, and her hinder parts will be placed before her face. She will sit by the waters of solitude and, after placing her vessel, will spread her feet to every passerby and be polluted up to the crown of her head. It would have been more right to have undertaken human marriage and walked upon level ground than, while striving for higher things, to fall into the depth of hell. Let not the daughter of Zion, I beseech, become a city that is a prostitute, lest, after the hospitality of the Trinity, demons dance there and Sirens and hedgehogs make their nests.

C. XII. Sometimes chastity is lost while the body is untouched.

Likewise Augustine, *On the Christian Faith*. PART III. Concupiscence both seeks and is sought after by women not only by touch and affection but also by sight. Nor should you say that you have chaste minds if you have immodest eyes, because an immodest eye is the messenger of an immodest heart. And when, even while the tongue is silent, immodest hearts make themselves known to one another by mutual gaze and take delight in one another's ardor according to the concupiscence of the flesh, chastity itself flees from their conduct even though the bodies remain untouched by unclean violation.

C. XIII. Adultery is perpetrated when either an unmarried or married woman is shamefully desired.

Likewise Gregory, [*Morals*, Book XXI, c. 9]. "He who looks upon a woman to desire her has already committed adultery with her in his heart." For since an adulterer is called *moechus* by a Greek word, when it is not another man's wife but a woman whom one is prohibited from looking upon, the Truth openly shows that adultery is perpetrated even by sight alone when an unmarried woman is shamefully desired. Yet this is generally distinguished according to the place or order of those desiring, because an eager desire stains this person in sacred orders just as the fault of adultery stains that person; nevertheless, among persons not dissimilar the same guilt of lust is distinguished.

PART IV. GRATIAN. But although women overpowered by violence have not lost chastity, let them nevertheless not dare to equate themselves with uncontaminated virgins. Hence Pope Leo, [epistle LXXXV, otherwise LXXXVII, to the bishops of Africa, c. 5]:

C. XIV. Let women who are overpowered not dare to compare themselves with uncontaminated virgins.

But those handmaids of God who lost the integrity of their modesty through barbarian oppression will be more praiseworthy in humility and modesty if they do not dare to compare themselves with uncontaminated virgins. For although every sin is born from the will, and the unwilling mind could remain unpolluted by the corruption of the flesh, nevertheless this will harm them less if they grieve that they have lost in the body what they were able not to lose in the mind.

GRATIAN. Therefore, since this woman who suffered violence cannot be proved to have lost chastity, she is in no way established to have incurred the crime of fornication or adultery. For, as Augustine says in the book *On the Good of Marriage*, [c. 4]: "Adultery is committed when, either by the impulse of one's own lust or by consent to another's, one lies with another woman or man contrary to the

marital covenant; and thus fidelity is broken, which in bodily and abject matters is a great good of the mind, and therefore it is certain that even bodily safety, by which this life also is sustained, ought to be placed after it."

C. XV. One who mingles with someone outside the covenant of marriage commits adultery.

Likewise Isidore on Exodus, [c. 29]. "You shall not commit adultery," that is, neither let anyone mingle with other women outside the covenants of marriage to satisfy lust. For one who approaches another woman besides his own commits adultery.

C. XVI. One who knows another woman while his wife is living commits adultery.

Likewise Augustine, *On Adulterous Marriages*, [Book II, c. 13]. I think no Christian disputes that a man is an adulterer who has been mingled with another woman while his own wife is either long ill, long absent, or desirous of living continently.

PART V. GRATIAN. Therefore, since none of these things is discovered to have been present in this woman—because she neither adhered to another by the impulse of her own lust, nor by consent to another's, nor while her husband was ill, absent, or desirous of living continently, but, having been violently overpowered by another's lust, suffered force—it appears that she can be called neither a fornicator nor an adulteress. Hence she cannot be put away on any ground. For when the Jews asked Christ whether it was lawful for a man to put away his wife for any cause, he answered them: "Have you never read that he who made them from the beginning created them male and female? Therefore, what God has joined, let man not separate." Then he concluded his discourse by saying that no one can put away his wife except for the cause of fornication. Hence the Apostle says in the Epistle to the Corinthians: "To those who are joined in marriage I command—not I, but the Lord—that the wife is not to depart from the husband." From this it is given to be understood that, whatever the husband and wife may be like, once they have adhered to one another with marital affection, they cannot thereafter depart from one another. Hence Ambrose writes in the *Hexameron*, under the title of the fourth day:

C. XVII. Whatever a husband may be like, once he was pleasing, he is not to be put away.

The husband who once was pleasing is horrible and uncultivated; is another husband therefore to be chosen? A horse loves its mate, and if another is substituted, it does not know how to draw the yoke with another's mate and thinks itself not whole. You repudiate your yoke-mate and think that he must often be changed? Change him, and if he fails for one day, bring in a rival; and immediately, when the cause is unknown, do you prosecute an injury to modesty as though it were known?

C. XVIII. The same is understood concerning a wife.

Likewise Augustine, [*On the Lord's Sermon on the Mount*, Book I, c. 32]. If someone has a wife who is sterile, deformed in body, weak in her limbs, blind, deaf, lame, or anything else; or if she is worn down by diseases, labors, and pains; and whatever intensely horrible thing can be imagined, except fornication—let him sustain it for the sake of fellowship and fidelity.

C. XIX. It is not lawful for a man to put away his wife except for the cause of fornication.

Likewise Jerome to Oceanus, *On the Death of Fabiola*. The Lord commanded that a wife ought not to be put away except for the cause of fornication, and that, if she has been put away, she is to remain unmarried. Whatever is commanded to men consequently redounds to women. For an adulterous wife is not to be put away while an adulterous husband is to be retained.

[C. XX.] Likewise.

Among us, what is not lawful for women is equally not lawful for men, and the same servitude is assessed under an equal condition.

C. XXI. Let one who puts away his wife apart from the cause of fornication be deprived of communion.

Likewise from the Twelfth Council of Toledo, [c. 8]. PART VI. It is the Lord's precept that a wife ought not to be put away by her husband except for the cause of fornication. Therefore, whoever leaves his wife on any ground apart from guilt of the aforesaid crime, because he has determined to separate what God joined, is to remain deprived of ecclesiastical communion and alien to the assembly of all Christians for as long as he does not sincerely embrace and foster fellowship with the spouse he left. Accordingly, those who, after already being admonished once, twice, and three times by a priest to correct themselves, are unwilling to return to fellowship with their spouse will by their own merits separate themselves also from an office of palatine dignity and, furthermore, will lose the testimony of noble dignity for as long as they remain in the fault, because they have delivered their own flesh to the throat of separation.

[C. XXII.] Likewise.

Nicholas in response to the inquiries of the Bulgars, [c. 96]. Whatever a woman has plotted against you, or if she has accused you, she is not to be rejected or utterly held in hatred, except for the cause of fornication.

PART VII. GRATIAN. But it is asked: since the condition of each is equal, why are men who have communion with adulterous wives not summoned, while, to the contrary, wives are seen to remain in fellowship with adulterous husbands? Concerning these matters Pope Innocent writes thus, [epistle III, to Bishop Exsuperius, c. 4]:

C. XXIII. Adultery is punished by equal reasoning in each sex.

The Christian religion condemns adultery by equal reasoning in each sex. But women do not readily accuse their husbands of adultery, and hidden sins do not have punishment. Men, however, are accustomed more freely to report adulterous wives before priests, and therefore, when their crime has been disclosed, communion is denied to women; but when the deed of men lies hidden, no one is readily excluded on the basis of suspicions. He will certainly be removed if his shameful deed is uncovered. For since the case is equal, sometimes, when proof is lacking, the principle of punishment rests.

Question VI

GRATIAN. Behold, this woman cannot be put away, since she is found innocent of fornication. But suppose that she herself is an adulteress. It is asked whether an adulterous man can put her away for the cause of fornication. For it does not seem that one infected by an equal crime can punish another for the same. Hence, when the Jews accused the adulteress, they received from the Lord the judgment of equity: "Whichever of you is without sin, let him first cast a stone at her." Hence it is also commanded in the Gospel: "Hypocrite, first cast the beam out of your eye, and afterward you will cast the mote out of your brother's eye." Hence Augustine also writes in Book I *On the Lord's Sermon on the Mount*, [c. 28]:

C. I. One who fornicates cannot put away his wife for the cause of fornication.

Nothing is more unjust than to put away a wife for the cause of fornication if the man himself is also proved to fornicate. For that saying meets him: "In that in which you judge another, you condemn yourself, for you do the same things that you judge." Therefore, whoever wishes to cast off his wife for the cause of fornication must first be purged of fornication. I would say the same also concerning a woman.

C. II. Let each man preserve himself for his wife as he wishes to find her.

The same, *On the Words of the Lord*, tractate [or sermon] XLVI. If you are going to take wives, preserve yourselves for your wives. As you wish to find them, let them also find you. What young man is there who does not wish to take a chaste wife? And if he is going to receive a virgin, who does not desire her untouched? You seek one untouched? Be untouched. You seek one pure? Be pure. For it is not the case that she can and you cannot.

C. III. One who disdains being judged concerning himself ought not to seek judgment concerning another.

The same, in the epistle to Paxentius, the Arian count, [epistle CLXXIV]. It is unjust for someone to wish to judge concerning another and to be unwilling to be judged concerning himself.

C. IV. Men are to be punished more gravely than women for adultery.

The same, *On Adulterous Marriages*, [Book II, c. 8]. Husbands are indignant if they hear that adulterous men pay penalties similar to adulterous women, although the former ought to be punished so much more gravely insofar as it pertains more to them both to conquer women by virtue and to govern them by example.

C. V. Just as the man is the head of the woman, so by committing adultery he sins more gravely than the woman.

The same, *On the Ten Strings*, [c. 3]. "You shall not commit adultery," that is, you shall not go to any other woman besides your wife. But do you demand this from your wife and refuse to render it to your wife? And although you ought to precede your wife in virtue—since chastity is a virtue—do you fall under one impulse of lust? And do you wish your wife to be victorious while you lie conquered? And since you are the head of your wife, does she whose head you are precede you to God? Do you

wish your house to hang upside down? For the man is the head of the woman. But where the woman lives better than the man, the house hangs upside down. If the man is the head, the man ought to live better and to precede his wife in all good works.

GRATIAN. By these authorities it is shown that an adulterous man cannot put away an adulterous wife.

Question VII

GRATIAN. PART I. But now it is asked whether one who has put away his wife for the cause of fornication can take another while she is living. That this cannot be done is attested by Augustine in the book *On the Good of Marriage*, [c. 7], saying:

C. I. The bond of marriage cannot be dissolved by fornication.

When divorce—that is, marital separation—intervenes, the marriage covenant is not abolished, so that even separated persons are spouses to one another; but adultery is committed with those to whom they have been joined after their repudiation.

C. II. A marriage that is proved to have once been entered is dissolved for no reason.

The same, *On Adulterous Marriages*, Book II, [cc. 4 and 5]. A wife is lawfully put away on account of the cause of fornication, but the former bond remains. For this reason, whoever takes a woman put away on account of fornication becomes guilty of adultery. But just as, while the sacrament of regeneration remains in that person, whoever is guilty of a crime is excommunicated, so a woman who is separated from her husband will never lack the sacrament of marriage, even if she is not reconciled to her husband. But she will lack it if her husband has died. One guilty of excommunication, however, will for this reason never lack the sacrament of regeneration, even while unreconciled, because God never dies.

C. III. Whether a husband has departed from his wife or a wife from her husband for the cause of fornication, the departing spouse is prohibited from adhering to another.

The same, on Paul's Epistle to the Corinthians. The Apostle says: "To those who are in marriage I command—not I, but the Lord—that the wife is not to depart from the husband; but if she has departed, she is to remain unmarried or be reconciled to her husband." For it can happen that she departs for the cause which the Lord permitted. But if a woman is permitted to put away her husband because of the cause of fornication, what will we answer concerning what he says afterward: "And let the husband not put away the wife"? Why does he not add "except for the cause of fornication," which the Lord permits, unless because he wishes a similar form to be understood: that if he has put her away—which is permitted for the cause of fornication—he is to remain without a wife or be reconciled to his wife?

And after a few words: § 1. But the Lord permitted a wife to be put away for the cause of fornication. Yet because he permitted it, he did not command it.

[C. IV.]

The same, *On the Lord's Sermon on the Mount*, [Book I, c. 25]. It can happen that a man puts away his wife for the cause of fornication, which the Lord wished to be excepted. But if neither is she permitted to marry while the husband from whom she departed is living, nor is he permitted to take another while the wife whom he put away is living, much less is it right to commit unlawful acts of illicit intercourse with anyone whatever.

C. V. A man put away by his wife, or a woman put away by her husband, is to be brought to penance unless they wish either to live continently or to be reconciled to one another.

Likewise from the Council of Milevis, [c. 17]. It was decided that, according to evangelical and apostolic discipline, neither a man put away by his wife nor a woman put away by her husband is to be joined to another, but let them remain thus or be reconciled to one another. But if they despise this, let them be brought to penance.

C. VI. One who presumes to take a woman put away by her husband commits adultery.

Likewise Augustine, Book I *On the Lord's Sermon on the Mount*, [c. 25]. To confirm that a wife is not readily put away, the Lord excepted the sole cause of fornication; but he commands all other troubles, if any arise, to be bravely sustained for the sake of marital fidelity and chastity. And he also calls the man who takes a woman released from her husband an adulterer.

C. VII. A woman who marries another while her husband is living is proved to be an adulteress.

Likewise Jerome to the priest Amandus. Cutting off all excuses, the Apostle most openly determined that a woman is an adulteress if she marries another while her husband is living. I do not wish you to put forward to me the violence of an abductor, the provision of a mother, the authority of a father, a crowd of relatives, the snares of servants, or losses to the parents' household property. For as long as the husband lives—although he is an adulterer, although a sodomite, although covered with every shameful deed and abandoned by his wife because of these crimes—he is reckoned her husband, and she is not permitted to receive another husband. The Apostle does not determine this by his own authority; rather, with Christ speaking in him, he followed the words of Christ, who says in the Gospel: "He who puts away his wife, except for the cause of fornication, causes her to commit adultery; and he who receives a woman put away is an adulterer." Hence the Apostles also, understanding the grave burden of marriage, say: "If it is so, it is not expedient for a man to receive a wife." To this the Lord says, "He who is able to receive it, let him receive it," and immediately, under the example of the three eunuchs, introduces the blessedness of virginity, which is restrained by no law of the flesh.

C. VIII. It is not lawful for a believing woman who puts away an adulterous husband to marry another.

Likewise from the Council of Elvira, [c. 9]. Let a believing woman who has left a believing adulterous husband and takes another be prohibited from taking him. But if she has taken him, let her not

receive communion before the man whom she left has departed from the world, unless perhaps the necessity of illness compels it to be given.

C. IX. One who is joined in many marriages is to be compelled to penance.

Likewise from the Council of Pope Martin, [that is, from the *Capitula* of Martin of Braga, c. 80]. If anyone has been joined in many marriages, let him perform penance. But let the penitent's manner of life and faith determine the period.

C. X. One who puts away his wife because of fornication and takes another is proved to commit adultery.

Likewise Augustine, *On Adulterous Marriages*, Book I, [c. 9]. Just as it cannot rightly be said, "If a person does not know, he does not sin"—for there are also sins of the ignorant, although lesser than those of persons who know—so it cannot rightly be said, "If a husband has put away his wife for the cause of fornication and has taken another, he does not commit adultery." For there is adultery also by those who take other women after leaving their former wives because of fornication, although it is certainly lesser than that of those who put them away not because of fornication.

PART II. GRATIAN. For there are degrees in fornication, so that, just as an adulterer sins more gravely than a fornicator, so one who takes another without his own wife having been put away commits a graver offense than one who puts away his own and knows another. Likewise, one who has a wife and approaches his neighbor's spouse sins more gravely than one who, without a wife, violates another's bed, or one who, being married, approaches an unmarried woman. But incestuous persons surpass all these, and those who sin against nature surpass them. Hence Augustine, *On Adulterous Marriages*:

[C. XI.]

"The evil of adultery surpasses fornication, but is surpassed by incest. For it is worse to lie with one's mother than with another man's wife. But the worst of all these is what is done against nature, as if a man should wish to use a woman's member not conceded for this purpose. For if natural use slips beyond measure, it is indeed venial with a wife but condemnable with a prostitute. The use that is against nature is done execrably with a prostitute, but more execrably with a wife. The ordering of the Creator and the order of the creature have such great force that, in matters conceded for use, even when the measure is exceeded, this is far more tolerable than one or a rare excess in those matters that have not been conceded."

C. XII. Intercourse according to nature is a lesser evil than sinning against nature.

Likewise Ambrose, in the book *On the Patriarchs*, [Book I, *On Abraham*, c. 6]. Holy Lot offered the modesty of his daughters. For although that too was shameful impurity, nevertheless intercourse according to nature was a lesser evil than sinning against nature. He preferred the gracious duty of hospitality, inviolable even among barbarous nations, to the modesty of his house.

C. XIII. Shameful deeds that are proved to be against nature are more grave.

Likewise Augustine, *Confessions*, Book III, [c. 8]. Shameful deeds that are against nature are everywhere and always to be repudiated and punished, such as those of the Sodomites. If all nations committed them, they would be held by divine law under the same guilt of crime, for that law did not make human beings so that they would use one another in that manner. Indeed, the very fellowship that we ought to have with God is violated when the same nature, whose author he is, is polluted by the perversity of lust.

C. XIV. Use against nature is more shameful and more disgraceful than fornication or adultery.

The same, *Against Jovinian*, Book I. Natural use is lawful, as in marriage, and unlawful, as in adultery. But that which is against nature is always unlawful and without doubt more disgraceful and shameful. The holy Apostle reproved it both in women and in men, wishing them to be understood as more condemnable than if they sinned in natural use either by committing adultery or fornication.

C. XV. Every unclean pollution is fornication, although the sins of fornication are various.

Likewise Isidore, [Book II *On the Highest Good*, c. 39]. PART III. Sin reigns in a person not only from committed fornication but, if that person still takes delight in it and it holds the mind, without doubt it reigns. Fornication of the flesh is adultery; fornication of the mind is servitude to idols. There is also spiritual fornication, concerning which the Lord says: "He who looks upon a woman to desire her has already committed adultery with her in his heart." Every unclean pollution is called fornication, although each person prostitutes himself by a different pleasure of shamefulness. For from delight in fornicating various shameful deeds are begotten, by which the kingdom of God is closed, so that a person is separated from God.

§ 1. Among the other seven vices, fornication is of the greatest wickedness, because through the uncleanness of the flesh it violates the temple of God. There are also certain women who, like animals, continually serve lust without any discretion; I would not compare them even to dumb beasts. For when cattle have conceived, they no longer grant males access to themselves.

C. XVI. Adultery holds the second place among punishments.

Likewise from the First Epistle of Clement, [to James]. What among all sins is more grave than adultery? For it holds the second place among punishments; those indeed hold the first who stray from God, even if they have lived soberly.

GRATIAN. By these authorities it is most clearly shown that whoever puts away his wife for the cause of fornication will not be able to take another while she is living; and if he has taken one, he will be guilty of adultery.

PART IV. § 1. To these things it is answered thus: These authorities speak of those whose continence carnal weakness does not impede, or of those who, by furnishing the cause of separation, rendered themselves unworthy of union with others. Hence Ambrose on the First Epistle of Paul to the Corinthians, [on c. 7]:

[C. XVII.]

"Let a wife not depart from her husband except for the cause of fornication; but if she has departed, let her either remain unmarried or be reconciled to her husband; and likewise let the husband not put away his wife." Therefore, he does not add concerning the husband what he set forth concerning the wife, because the husband is permitted to take another.

C. XVIII. It is lawful for a man whose wife is unable to render him the marital due because of bodily infirmity to take another.

Likewise Gregory the Younger to Bishop Boniface, [epistle IV]. As to what you proposed—if a woman seized by infirmity has been unable to render the marital due to her husband, what her spouse is to do—it would be good if he remained thus, so that he might devote himself to abstinence. But because this belongs to great persons, let one who cannot contain himself marry instead; nevertheless, let him not withdraw the aid of support from her whom infirmity impedes and no detestable fault excludes.

PART V. GRATIAN. But that saying of Ambrose is said to have been inserted by falsifiers. That saying of Gregory is found to be utterly opposed to the sacred canons—indeed, to evangelical and apostolic teaching. But certain persons, desiring to preserve the judgment of Ambrose, judge that it is to be understood not of just any fornication, so that a man might lawfully put away his wife on account of any fornication and take another while the woman put away is living, but only of incestuous fornication: namely, when someone's wife has publicly handed herself over to be defiled by the father and son, the husband's brother or maternal uncle, or someone similar. Because she has rendered herself permanently unlawful for her husband by passing through union with a blood relative into the first, second, or third degree of affinity, she is lawfully put away and another is brought in while she lives. If anyone here contends that it is no more lawful for a man than for a woman—if the husband fornicates with someone in the same manner—let that person know that "man" was used by Ambrose not for sex but for strength of mind, and understand that "woman" likewise was named not for the sex of the body but for softness of mind. But because no authority permits another wife to be brought in while a wife is living, that saying of Ambrose is understood, in the aforesaid kind of fornication, not to mean that one can take another while the woman put away is living, but that after the death of the female fornicator or male fornicator—each of whom, as was said above, is called "woman" because of the corruption of lust—the one who is clean from fornication, whether man or woman, can be joined to another; but adulterers, if they survive, will in no way be able to be joined to others. Thus also is understood what is read in a chapter of a certain Council:

C. XIX. Lawful marriage is not to be denied to the man whose wife slept with his brother.

A certain woman slept with her husband's brother. It was decreed that the adulterers are never to be joined in marriage; but lawful marriages are not to be denied to the man whose wife was violated. The passage of the Council of Mainz is also understood thus:

C. XX. Let those who have committed any of the acts set forth below be separated and never joined in marriage.

If anyone has taken a widow as wife and afterward has fornicated with his stepdaughter or with two sisters; or if any woman has fornicated with two brothers or with a father and son; if anyone has polluted his brother's widow, his granddaughter, stepmother, daughter-in-law, female cousin, maternal uncle's daughter or his widow, or stepdaughter—we command them to be separated and never thereafter joined in marriage.

C. XXI. One who pollutes his wife's sister can have neither woman.

Likewise. One who has slept with two sisters, one of whom was previously his wife, is to have neither of them; nor are the adulterers themselves ever to be joined in marriage.

C. XXII. One who leaves his wife because of adultery is to preserve continence.

Likewise that saying of Gregory. But those who discover their wives in adultery will not be permitted —neither the man nor the woman—to receive another wife or another husband for as long as both live. But if the adulteress has died, her husband, if he wishes, may marry, only in the Lord; the adulteress, however, may never marry, even if her husband has died. Yet on all the days of her life let her discharge the lamentations of the most severe penance.

C. XXIII. Let one who polluted his wife's sister have neither woman.

Likewise from a decree of Pope Zachary. Did you lie with your wife's sister? If you did, you are to have neither. And if the woman who was your wife was unaware of the crime, if she is unwilling to contain herself, let her marry whom she wishes in the Lord. But you and the adulteress are to remain without hope of marriage and, for as long as you live, perform penance according to the priest's precept.

C. XXIV. One who sleeps with his stepmother, stepdaughter, or wife's sister cannot come to marriage; lawful marriages are not denied to their husbands.

Likewise from the Council of Tribur. If anyone has slept with his stepmother, neither can come to marriage; but her husband can, if he wishes, receive another if he cannot contain himself.

§ 1. The same is to be observed concerning one who has slept with his stepdaughter or with his wife's sister.

GRATIAN. Although what is set down at the end of the Council of Mainz is understood by some to have been said not of those lawfully joined but of fornicators—namely, that the fornicators are to depart from one another and remain without hope of marriage—that saying of Gregory to Boniface was permitted for a time to the English, to whom blessed Gregory permitted marriages to be contracted in the fourth and fifth generation. Otherwise it would be empty, since Augustine says in the *Sermon on the Mount*: "If someone has a sterile wife, etc."

C. XXV. It is not lawful for a marriage to be dissolved because of infirmity or bodily injuries.

Likewise Nicholas to Charles, archbishop of Mainz. PART VI. The marriages of those who contracted marriage while healthy, and madness, frenzy, or some infirmity befell one of the two, cannot be dissolved because of this infirmity. The same is to be known concerning those who are blinded by enemies, mutilated in their members, or castrated by barbarians.

C. XXVI. A mad man and a mad woman cannot contract marriage.

Likewise Pope Fabian. Neither a mad man nor a mad woman can contract marriage; but if it has been contracted, let them not be separated.

PART VII. GRATIAN. Therefore, as is gathered from the foregoing, it is not lawful for this man to take another after putting away his wife. For a certain marital bond remains between them which is not dissolved even by the separation itself. Hence Augustine says in the book *On the Good of Marriage*, [c. 7]:

C. XXVII. It is not lawful for someone to put away a sterile wife and take another for the sake of fertility.

The social bond has such great force that, although it is bound together for the sake of procreation, it is not dissolved by the failure of that very purpose of procreation. For a man could put away a sterile wife and take one from whom he might have children, and nevertheless it is not lawful.

Likewise, [c. 15]. § 1. The bond of nuptials remains even if offspring, for whose sake it was entered, does not follow because of manifest sterility, so that, even when the spouses already know that they will not have children, it is nevertheless not lawful for them to separate even for the sake of children and to join themselves to others. But if they do this, they commit adultery with those to whom they have joined themselves, while the marriage itself remains. Certainly, among the ancient fathers it was right, with the wife's consent, to employ another woman from whom common children would be born—through the union and seed of the one, but under the right and power of the other. Whether it is right even now I would not rashly say.

[C. XXVIII.]

The same, in the same work. The rights of nuptials once entered remain among the living to such a degree that, even when separated, they are spouses to one another rather than to those to whom they have adhered.

And afterward: § 1. A certain marital bond remains among the living which neither separation nor union with another can take away; just as an apostate soul, departing as it were from marriage with Christ, does not lose the sacrament of faith which it received in the washing of regeneration even after faith has been lost. For without doubt it would be restored to one returning if that person had lost it in departing. But one who has departed has this for an accumulation of punishment, not for the merit of a reward.

Question VIII

GRATIAN. Therefore, since it has been proved that this man cannot put away his wife and take another, it is asked whether it is lawful for him to sin under this condition: that he might lead an unbelieving woman to the faith. Augustine affirms that this cannot be done, speaking thus in Book I *On Adulterous Marriages*, [c. 24]:

SOLE CHAPTER. No one ought to depart from a vow of continence, even if an unbelieving woman promises that she will become Christian.

Not only is adultery not to be committed—which certain persons do, but everyone who puts away his wife and takes another commits it, even if he has taken her for this reason, that he may make her Christian—but also whoever, not bound to a wife, has vowed continence to God ought in no way to sin by this compensation, so that he therefore believes that he is to take a wife because the woman who seeks marriage with him has promised that she will become Christian. For what was lawful for someone before he vowed will not be lawful when he has vowed that he will never do it, provided that he vowed that which is to be vowed, such as perpetual virginity; or, after marriages have been experienced, the chastity of widowhood by those released from the marital bond; or continual continence by faithful and chaste spouses who vow by consent and release the carnal dues to one another—which it is not right for the one to vow without the other. These things, therefore, and any others that are most rightly vowed, once human beings have vowed them, are to be broken under no condition, since they vowed them without any condition.

Causa XXXIII

CASE XXXIII.

GRATIAN. A certain man, impeded by acts of magic, could not render the marital due to his wife. Meanwhile, another man secretly corrupted her; separated from her husband, she publicly marries her corrupter. The crime she had committed she confesses to God only in her heart. The faculty of knowing her is restored to this man; he seeks his wife again. After receiving her, so that he might more readily devote himself to prayer and approach the flesh of the Lamb in purity, he promised that he would preserve continence; but his wife did not give her consent. (Q. I.) It is asked whether, because of the impossibility of intercourse, a woman is to be separated from her husband. (Q. II.) Second, whether, after the separation, she can marry the man with whom she had previously fornicated. (Q. III.) Third, whether a crime can be blotted out by confession of the heart alone. (Q. IV.) Fourth, whether someone can render the marital due during a time of prayer. (Q. V.) Fifth, whether a man can vow continence without his wife's consent, or whether he can extort from her by threats or terrors permission to vow.

Question I

GRATIAN. PART I. That a woman cannot be separated from her husband because of his inability to render the marital due is proved by evangelical and apostolic authority. For Christ says thus in the Gospel: "No one is permitted to put away his wife except for the cause of fornication"—either that by

which one of them, as Augustine explains, has fornicated, or that to which one wished to draw the other.

Likewise the Apostle: "A woman, for as long as her husband lives, is bound to his law," not the law of rendering her the marital due, but of not transferring herself to another.

Likewise: "To those who are joined in marriage I command—not I, but the Lord—that the wife is not to depart from the husband except for the cause of fornication." Therefore, by evangelical and apostolic authority a woman is prohibited from departing from her husband except for that cause most well known to all. If she has departed when it intervenes, she must remain unmarried or be reconciled to her husband. Hence it is given to be understood that inability to render the marital due does not make a separation of the marriage.

§ 1. To these things it is answered thus: Marriage is confirmed by consummation, as was proved above. But after it has been confirmed by consummation, it is not lawful for a husband to put away his wife or for a wife to depart from her husband except for the cause of fornication. Yet before it is confirmed, inability to consummate dissolves the bond of marriage. Hence Gregory writes to John, bishop of Ravenna:

C. I. It is lawful for a woman whom her husband could not know because of frigidity to marry another.

As to what you asked concerning those who are joined in marriage and cannot marry in fact—whether he can take another, or she another—concerning them it is written: "If a man and woman have joined themselves, and the woman afterward says concerning the man that he cannot have intercourse with her, if she can prove by a just judgment that it is true, let her receive another. But if he has received another, let them be separated."

[C. II.] Likewise from an epistle of the same.

You asked concerning those who say that, because of the cause of a frigid nature, they cannot mingle with one another by giving their labor to the flesh. But if this man cannot use her as a wife, let him have her as a sister. But if they wish to break the marital bond, let each remain unmarried. For if he could not naturally agree with this woman, how will he be compatible with another? Therefore, if the man wishes to receive another wife, the reason lies manifestly open: at the devil's suggestion, feeding hatred, he held her hateful, and for this reason he strives to put her away by the falsity of a lie. But if the woman brings the complaint and says, "I wish to be a mother and to procreate children," let each of them, with seven relatives acting as oath-helpers, touching the most sacred relics, state under oath that they were never joined by mingling of the flesh and made one flesh. Then the woman appears able to contract a second marriage. I speak in a human manner because of the weakness of their flesh. But the man who is of a frigid nature is to remain without a spouse. But if he too has received another union, then those who had sworn are to be held guilty of the crime of perjury, and after penance has been completed they are to be compelled to receive their former marriages again.

PART II. GRATIAN. But this is commanded to be observed when each confesses the same thing. Yet if the man asserts that he rendered the marital due to his wife and she denies it, it is deservedly asked to whom credibility is rather to be given. Concerning these matters it was established thus in the Council held at Compiègne:

C. III. Let the matter rest upon the truthfulness of the man if the woman denies that she was known by him.

If anyone has received a wife and has had her for some time, and the woman herself says that he never had intercourse with her, while the man says that he did so, let the matter rest upon the truthfulness of the man, because the man is the head of the woman.

PART III. GRATIAN. Behold, inability to render the marital due dissolves the bond of marriage. But this was established concerning natural inability. This woman, however, was separated from her husband because an impediment of magic, not natural frigidity, prohibited the marital due. Hence it is asked whether in this case also it is lawful for her to depart from her husband and join herself to another. Hincmar, archbishop of Reims, writes thus concerning these matters:

C. IV. Concerning those who, impeded by acts of magic, cannot have intercourse.

If, through female diviners and sorceresses—with the hidden but never unjust judgment of God permitting and the devil preparing it—intercourse does not follow, those to whom these things happen are to be exhorted to make to God and a priest a pure confession of all their sins with a contrite heart and a humbled spirit, to make satisfaction to the Lord with abundant tears, more generous alms, prayers, and fasts, and that, through exorcisms and the other duties of ecclesiastical medicine, the ministers of the Church should strive to heal such persons insofar as the Lord—who healed Abimelech and his house through Abraham's prayers—assents. But if perhaps they have been unable to heal them, they will be able to be separated. Yet after they have sought other marriages, while those to whom they were joined in the flesh are living, they will be unable to be reconciled to the former spouses whom they left, even if the ability to have intercourse has been restored to them.

GRATIAN. But in this Hincmar appears contrary to the preceding chapter of Gregory. For there, after the ability has been restored, she is commanded to be separated from the man whom she married second and to return to the first. Here, however, while the man to whom she had been joined second is living, she will not be able to be reconciled to the first.

Question II

GRATIAN. PART I. That, after the separation, she can marry the man with whom she had previously fornicated was proved above. For her husband is dead to her. From the time when, separated from him by the judgment of the Church, she was released from his law. Hence, according to the Apostle, let her marry whom she wishes, only in the Lord.

§ 1. But it is asked: if, without ecclesiastical judgment and with no reasonable cause for separation proved, he had departed from her, would he be compelled to return to her? Concerning this it was established thus in the Council of Carthage, which Augustine attended, c. 30:

C. I. It is not lawful for anyone to put away his wife unless the cause of separation is first proved to the Church.

Laypersons who leave, or have already left, marital fellowship without any more grave fault, and who, proposing no probable causes of separation, leave their marriages so that they may presume upon either unlawful or other persons' unions: if they have cast off their wives before stating the causes of

separation before the bishops of the province and before being condemned by judgment, let them be excluded from the communion of the Church and the holy assembly of the people because they stain fidelity and marriages.

C. II. Divine law prohibits a man from putting away his wife except for the cause of fornication.

Likewise Ambrose on Luke, [on c. 16]. Or is what is wicked against subjects right against an equal? Therefore, you put away your wife as though by right, without a crime, and think this lawful for you because human law does not prohibit it? But divine law prohibits it. You who comply with human beings, fear God. Hear the law of the Lord, which even those who bear laws obey: "Those whom God has joined, let man not separate."

C. III. A woman put away by her husband without cognizance of the case is to be restored to all things.

Likewise Pope Nicholas to Emperor Charles. The *Ecclesiastical History* composed by Eusebius, bishop of Caesarea, says concerning a certain woman who was accused by her husband regarding chastity: "It was commanded by a law issued by the emperor that first she be freely permitted to arrange her household property over a longer time; then afterward she would answer the objections. All laws—ecclesiastical as well as common and public—command this."

§ 1. But if these things were established concerning women and secular men, much more are they conceded to ecclesiastical men and priests.

C. IV. Unless after restitution, no judgment concerning either the marriage covenant or the crime of adultery is to be conducted between husband and wife.

Likewise Pope Nicholas, [in the epistle to King Charles]. PART II. Whether a judgment is to be conducted concerning the marriage covenant or the crime of adultery, no reason permits Theutberga to be able to enter into litigation with Lothair unless she has first been restored for a time to her own power and freely associated with her own blood relatives. Among these things, a place is also to be provided in which no force of a multitude is feared, nor is it difficult to produce witnesses or the other persons who are required in controversies of this kind both by the holy canons and by the venerable Roman laws.

PART III. GRATIAN. In this chapter, although a cause appears to be set forth why it is not lawful for anyone to put away his wife by his own authority, and when this cause ceases the prohibition itself also appears to cease, nevertheless, because the separation itself is a penalty and a penalty is to be inflicted upon no one except through a judge, this is to be understood generally: whether because of the aforesaid cause or when no cause exists, it is not lawful for anyone to put away his wife by his own authority. The same is also to be understood concerning the penalty for homicide or any other penalty. Hence Pope Nicholas writes to Rudolf, archbishop of Bourges:

C. V. Marriage is to be utterly forbidden to those who kill their wives.

What else are killers of their spouses without a judgment to be held than murderers—and therefore to be brought to penance—when you do not add that the wives were adulterous or anything of this

kind? Marriage is utterly denied to them, except for youths, concerning whom the twenty-fifth decretal rule—or rather indulgence—of blessed Pope Leo is to be observed.

GRATIAN. In this chapter Nicholas appears to permit husbands to kill their wives for the cause of adultery or another crime of this kind. But ecclesiastical discipline commands criminals to be struck by the spiritual sword, not the material one: namely, by that sword with which Peter is commanded to slay and eat. Concerning this sword Christ also says in the Gospel: "I came not to send peace upon the earth, but a sword." Hence the same Nicholas writes to Archbishop Albinus:

C. VI. It is not lawful for anyone to kill an adulterous wife.

Among these matters Your Holiness endeavored to add the question whether, if anyone's wife has perpetrated adultery, her husband is permitted to kill her according to worldly law. But God's holy Church is never bound by worldly laws. It has no sword except the spiritual; it does not kill but gives life.

C. VII. The penance of one who kills his own wife without cause.

Likewise Pope Pius. Whoever has killed his own wife outside the law or without cause and certain proof, and has taken another wife, is to lay aside his arms and perform public penance; and if he is contumacious and has remained disobedient to his bishop, let him be anathematized until he consents. The same law will apply to one who has killed his superior.

C. VIII. The penance of Astulf, who killed his wife.

Likewise Stephen V to Astulf. We take care to admonish you with tears and much groaning of heart, son Astulf; but you ought not to be called a son, you who so cruelly perpetrated an unhappy homicide. For you killed your wife, a part of your body joined to you in lawful marriage, without cause for death, when she did not resist you and in no way plotted against your life. You did not find her doing a wicked thing with another man; rather, stirred by the devil, inflamed with impious fury, in the manner of robbers, more cruel than every beast, you most savagely slew her with your sword. And now after her death you add iniquity upon iniquity, an impious robber of your children. You who did not spare their mother made your children orphans, and after her death you wish to bring upon her a cause for death through one man, a murderer and reprobate witness. For neither the Gospel nor any divine or human law condemns or justifies anyone by the testimony of one man, even a suitable witness. How much more, through this wicked and most shameful man, ought she neither to have been condemned while alive nor to be accused by you after her death? First the cause of the crime had to be investigated carefully, and then, if it had been found to be so, she ought to have received the retribution of punishment according to the path of the law. For if it had been true—which may it not be—as the adulterer falsely claimed, after completing seven years of penance you could have put her away for a proved cause if you wished; nevertheless, you ought in no way to have killed her. For God does not will the death of a sinner, but that the sinner be converted to penance and live.

Therefore, let our counsel be pleasing to you, and do that which can appear better and lighter for you: have mercy on your soul, so that you are not a murderer of your very self. Therefore, we ask you, leave this evil world which drew you to so monstrous a criminal deed of sin. Enter a monastery, humble yourself under the hand of an abbot, and, aided by the prayers of many brothers, observe with a suppliant mind all things commanded to you, if perhaps the infinite goodness of God may

forgive your sins and refresh your soul before you are tormented by perpetual flames. Know most certainly that this is lighter and better for you.

But if you wish to perform public penance while remaining in your house or in this world—which you should not doubt will be worse, harder, and graver for you—we exhort you to do it as you ought. On all the days during which you must perform penance, do not drink wine or any strong drink; never eat flesh at any time, except at Easter and on the day of the Lord's Nativity. Perform penance on bread, water, and salt. Persevere at all times in fasts, vigils, prayers, and alms. Never gird yourself with arms, nor presume to litigate in any place. Never take a wife, have no concubine, nor dare to commit adultery. Never wash in a bath; never mingle yourself in the banquets of those rejoicing. In the church, separated from other Christians, place yourself humbly behind the door and doorposts. Commend yourself in supplication to the prayers of those entering and departing. Consider yourself unworthy of communion in the body and blood of the Lord on all the days of your life. Yet on the final day of your departure from life, if you have merited it, we mercifully concede that you receive it only as viaticum, if there is someone to give it. There are also many other things, unhappy man, which according to the great weight of your sin ought to have been added for you more harshly and with sufficient severity. But if, with the Lord's aid, you do and preserve with a perfect heart all these things mercifully stated to you above, we trust in God's immense clemency that you will have remission of your sins; and according to the saying of the just and good shepherd, holy Church will release you on earth from this bond of sin, so that by the grace of him who acquired her with his blood you may be released in heaven.

But if you act otherwise and despise so salutary an admonition of holy mother Church, be a judge unto yourself, and you will remain in the snare of the devil by which you are held entangled; your blood will be upon your head. We, estranged from fellowship with you, strive with every solicitude, with God himself aiding, to labor for the salvation of the other children of God and daily to implore the Lord's mercy more attentively.

C. IX. Let one take another wife while his wife is living rather than shed human blood.

Likewise Augustine, *On Adulterous Marriages*, [Book II, c. 15]. If, as is more truly said, it is not lawful for a Christian man to kill an adulterous spouse, but only to put her away, who is so senseless as to say to him: "Do what is not lawful so that what is not lawful may be lawful for you"? For since each is unlawful according to the law of Christ—both to kill an adulteress and to take another while she is living—one must abstain from both, and an unlawful thing is not to be done in place of an unlawful thing. For if he is going to do what is not lawful, let him now commit adultery and not commit homicide, so that while his wife is living he takes another but does not shed human blood.

PART IV. GRATIAN. In the foregoing authorities, all are prohibited from killing their adulterous spouses; but after seven years of penance they are permitted to put them away. But if they have killed them, they are commanded to remain perpetually without hope of marriage, unless perhaps mercy is extended to them to contract marriages because of a lapse of youthful incontinence. Clerics, moreover, are conceded permission, if their wives have sinned, to keep them in custody without the severity of death and to compel them to fasts, but not to afflict them as far as death. Hence it is read in the First Council of Toledo, [c. 7]:

C. X. If the wives of clerics have sinned, let the clerics guard them at home short of death and compel them to salutary fasts.

It was decided that, if the wives of any clerics have sinned, lest perhaps they have greater license to sin, their husbands are to receive this power: short of death, to guard and bind them in their own house, compelling them to salutary, not deadly, fasts, so that poor clerics may render help to one another if they do not have servants. But let them not take food with the wives themselves who had sinned, unless perhaps, after performing penance, they return to the fear of God.

PART V. GRATIAN. But now it is asked why it was established by the sacred canons that penitents are recalled to their former status after seven years. Concerning these matters Isidore writes thus to Bishop Masona, [in the preface to the book *On the Highest Good*]:

C. XI. Why it was established that after seven years a penitent should return to the former status.

This very thing—that the censure of the canons commanded a penitent to return to the former status after seven years—the holy Fathers established not by the choice of their own judgment but rather from the judgment of divine justice. For it is read that Miriam, the prophetess and sister of Aaron, when she incurred the offense of detraction against Moses, was immediately covered with the mark of leprosy; and when Moses sought that she be cleansed, the Lord commanded her to go outside the camp for seven days and, after cleansing, to be admitted into the camp again. Therefore, Miriam, sister of Aaron, is understood as the flesh of a priest. When it is given to pride and stained by the most filthy contagions of thoughts, it is to be cast outside the camp for seven days—that is, outside the college of holy Church for seven years—so that after cleansing from vices it may receive the merit of its place or former dignity.

And after a few words: § 1. But at the end of the epistle I thought this was to be added: whenever a discordant judgment is found in the acts of councils, the judgment of that council whose authority is earlier or more powerful is rather to be maintained.

GRATIAN. Although this appears to have been said specifically concerning priests, it nevertheless ought to be understood generally concerning all penitents. For in imitation of that dominical judgment, David, reproved for adultery and homicide, is read to have offered to God a fast of one week in satisfaction for the shameful deed he had committed. Hence it has also been adopted by ecclesiastical custom that penance for major crimes is concluded within a period of seven years, unless either excellence of office or the magnitude of crimes exceeding common custom—such as when, contrary to the nature of human society, we immodestly adhere to parents, children, or other persons of this kind; or when, after abandoning natural use, we fornicate against nature in the manner of the Sodomites; or when we descend even to intercourse with brute animals—compels one to exceed the aforesaid period.

PART VI. § 1. Concerning penitents it is also asked whether marriages are generally conceded to them after penance has been completed. For by canonical authority penitents are generally prohibited from returning to secular military service or contracting marriages. Hence Pope Siricius, [epistle I to Bishop Himerius, c. 5]:

C. XII. Penitents are prohibited from contracting marriages.

Concerning those persons Your Love not unfittingly believed that the Apostolic See should be consulted who, after performing penance, returned like dogs and swine to their former vomit and wallowing places and sought again the belt of military service, theatrical pleasures, new marriages, and prohibited intercourse. Children begotten after absolution betrayed the continence they had professed. Concerning these persons, because they now have no aid from performing penance, we judged that this should be decreed: let them be joined to the faithful within the church in prayer alone; let them be present at the sacred celebrations of the mysteries, although they do not deserve it; but let them be separated from the banquet of the Lord's table, so that, corrected at least by this strictness, they may both chastise their errors in themselves and give an example to others, so that they may be drawn back from obscene desires. Nevertheless, because they fell through carnal frailty, when they begin to set out toward the Lord we wish them to be aided by the gift of viaticum through the grace of communion. We judge that this same form is to be observed also concerning women who bound themselves to such pollutions after penance.

GRATIAN. But because, from fear of dissolving their marriage, some delay approaching penance, or because of a lapse of youth which they fear, neglect to receive the remedy of penance, by canonical authority they are permitted either to retain marriages already contracted or to contract others. Hence Pope Leo writes to Galerius, bishop of Tripoli:

C. XIII. By indulgence, lawful marriages are not to be denied after penance.

We have heard from certain persons that in your dioceses and the territories of Christians assemblies withdraw themselves from the yoke of penance on a slight ground, saying: "If we perform penance, we must abandon marital union." In this they err and depart from the path of truth, because every worshiper of Christ's name ought earnestly to undertake and complete penance for all unlawful things, as the Lord says: "Perform penance, for the kingdom of heaven will draw near." But it is lawful for none of the orthodox to dissolve the lawful marriage of anyone undertaking penance.

And below: § 1. It is expedient for you to instruct them by addressing them with sacred discourses, so that they may be snatched from the darkness of error and, while joined in lawful unions, take care to perform penance for all unlawful things.

C. XIV. Because of a lapse of youthful incontinence, lawful marriages are not to be denied to penitents.

Likewise Leo IV. If one established in youth has performed penance because either fear of death or danger of captivity pressed him, and afterward, fearing a lapse of youthful incontinence, has chosen union with a wife lest he incur the crime of fornication, he appears to have done a venial thing if he has known no woman at all besides his spouse. Yet in this we do not establish a rule, but estimate what is more tolerable.

C. XV. This penance is to be imposed upon one who has killed his mother.

Likewise Pope Nicholas to Rathold, bishop of the holy church of Strasbourg. PART VII. We have learned that the bearer of these presents is a matricide. We command him to remain under the yoke of penance in such a manner that for one year he does not enter the church, but, standing before the

doors of the basilica, perseveres in praying and beseeching God that he may be snatched from so great a crime. But when the circuit of the year has been completed, let him have permission to enter the church; only let him stand among the hearers and not yet receive communion. But when the courses of three years have been completed, let the grace of holy communion be conceded to him; yet let him not offer oblations unless the courses of another seven years have first been completed.

§ 1. During all these years and times, let him not eat flesh or presume to drink wine, except on feast days and Sundays and from Easter until Pentecost. And wherever he wishes to go, let him be conveyed by no vehicle, but let him journey on foot. Let him not take arms except against pagans. Let him fast three days each week until evening. Let him not be separated from his own lawful spouse, lest he fall into the abyss of fornication, which we desire not to happen. But if the end of his life approaches before the course of three years, let him become a participant in the body and blood of our Lord Jesus Christ; but if not, let it be done as established above. Nevertheless, if you see his manner of life and the fountain of tears spring forth in all flourishing actions and excellent works, let watchful solicitude appear more humane toward him and let him be shown gentle to all.

C. XVI. After lawful penance, lawful marriages are permitted to young persons.

Likewise. PART VIII. If anyone has fornicated with two sisters or with those persons concerning whom holy Scripture prohibits it, if he has performed worthy penance and has been unable to sustain the continence of chastity, let him be permitted to receive a lawful wife in marriage. The same applies also to a woman who has fallen through such a crime, lest she be brought to the abyss of fornication. But we establish this solely concerning laymen and laywomen.

C. XVII. Let him who commits these crimes be punished, but let him not dismiss his lawful wife.

The same. If anyone has fornicated with his spiritual mother, he is struck, as you know, with the blows of anathema. Likewise, moreover, we decree that he also be struck who has perpetrated the crime of fornication with her whom he received from the sacred font of baptism, or with her whom he held before the bishop when she was anointed with sacred chrism; nevertheless, if he has a lawful wife, let him not dismiss her.

PART IX. GRATIAN. § 1. For a judge ought not by his own authority to separate those whom God has joined. Although Isidore understands this otherwise, saying:

C. XVIII. A human being does not separate those whom punishment condemns.

"What God has joined, let no human being separate." You ask how? You understand: violently, without law, without reason—what God has joined, let no human being separate. For a human being does not separate those whom punishment condemns, whom guilt accuses, whom crime constrains.

GRATIAN. But this is understood to have been said concerning those whom secular judges strike with the severity of the laws for their crimes, whom they either punish with death or order to be deported.

C. XIX. On the same matter.

Likewise from the Sixth Council of Toledo, [c. 8]. PART X. It is a judgment of the ancient and most holy father Pope Leo that, if one who is situated in the age of youth, while fearing the occurrence of death, comes to the remedy of penance, and if perhaps, being married, he is incontinent, lest he afterward fall into adultery, he should return to his former marriage until, with the maturity of time, he can attain the state of continence. We judge this in an equal manner concerning women as concerning men. This indeed was not commanded generally and canonically, but it is established that it was granted to you on account of human frailty, only on this condition: if the one who is not subjected to the laws of penance departs from this life before one of them, by consent, has returned to continence, the survivor is not permitted again to pass to the embraces of a wife. But if the life of the one who did not accept the penitent's absolution survives, let him marry if he cannot contain himself, and let him enjoy the companionship of another wife. It is clear that this was decreed by us equally for both sexes, namely in such a way that in all these matters the priest's direction is awaited, so that, according as he shall perceive a suitable age, he may give the law of absolution from penance.

Question III: Treatise on Penance (De poenitentia)

QUESTION III. [TREATISE ON PENANCE.]

GRATIAN. Having briefly run through these matters, in which we have wandered somewhat beyond the end of the case, let us proceed to discuss the third question of the proposed case, in which it is asked:

Distinction I

GRATIAN. PART I. Let us return to whether anyone can satisfy God by contrition of heart alone and secret satisfaction, without confession of the mouth. For there are those who say that anyone can merit pardon for a crime without confession to the Church and priestly judgment, according to that saying of Ambrose on Luke, [at chapter 22]:

[C. I.]

"Peter grieved and wept because, as a human being, he erred. I do not find what he said; I know that he wept. I read of his tears; I do not read of a satisfaction."

[C. II.] Likewise John Chrysostom.

"Tears wash away the fault that shame prevents one from confessing with the voice."

[C. III.] Likewise the Prophet.

"A sacrifice to God is a contrite spirit; a contrite and humbled heart, O God, you will not despise."

[C. IV.] Likewise.

"I said, I will confess against myself my injustice to the Lord, and you remitted the impiety of my sin." Augustine, explaining this, says:

[C. V.]

"Great is God's loving-kindness, that he remitted sins upon the promise alone. § 1. He does not yet pronounce it with his mouth, and nevertheless God already hears it in his heart, because the very act of saying it is a kind of pronouncement. For the vow is accounted as the work."

[C. VI.] In Book I of the Code, under the title *On Bishops and Clerics*, Emperor Jovinian.

PART II. "If anyone has dared—I will not say to seize, but merely to attempt—to join most sacred virgins in marriage, he shall be struck with capital punishment."

[C. VII.] In the book of the Code under the title *On Pleading*, Emperors Leo and Anthemius to Nicostratus, Praetorian Prefect.

"Let no one enter the association of advocates either in the forum of Your Magnitude, in a provincial court, or before any judge, unless he has been imbued with the sacred mysteries of the Catholic religion. But if anything shall have been done or attempted in any manner or by some contrivance, the office of Your Sublimity shall sustain the loss of one hundred pounds of gold by way of condemnation."

[C. VIII.] The same.

"But whoever shall have dared, contrary to the provident decree of Our Serenity, to seize the office of advocacy by subreption and shall have furnished prohibited patronage, removed from the offices of advocacy, shall especially sustain the sentence of proscription and perpetual exile. The governors of the provinces are also to know that he under whose administration anything of this kind shall have been attempted will sustain proscription of half his goods and the punishment of exile for five years."

[C. IX.] Likewise in Book IX, under the title *On the Julian Law of Treason*, [law 5].

"Whoever has plotted with soldiers—for the laws wished the will to commit a crime to be punished with the same severity as its accomplishment."

[GRATIAN.] Likewise under the Cornelian Law concerning assassins: "He who has gone about with a weapon for the purpose of killing a human being, just like him who has killed a human being, or by whose evil fraud the deed was committed, shall be restrained by the penalty of the Cornelian Law concerning assassins."

[C. X.] Emperors Valentinian, Valens, and Gratian.

"If any man or woman has undertaken the abomination of killing an infant, let that person know that he or she is to be punished with capital punishment."

[C. XI.] Emperors Gratian and Valentinian.

"If perhaps a woman is found to have prepared snares of death for her husband, or to have had the will to kill him in any other way, or perhaps a husband pursues his wife in that manner, in the same examination under torture inquiry is to be made, without anyone's protection, not only of the entire slave-household of the husband but also of the wife—of those, however, who were then present in the house."

[C. XII.] Likewise from the Digest, under the title *On Insults*, in the law *But It Is a Question*.

"If anyone has attempted to render either a male or a female, whether freeborn or freed, unchaste, he will be liable for insult. § 1. But even if the chastity of a slave has been assailed, insult has place. § 2. Chastity is said to be assailed when the object is that a chaste person be made unchaste. § 3. Not only is he who inflicted the insult—that is, he who struck—liable for insult, but he also is included who maliciously caused or arranged that someone's jaw should be struck with a fist."

[C. XIII.] Likewise according to Labeo.

"If anyone indeed was not struck, but hands were raised against him and he was repeatedly frightened as though he were about to be beaten, although he was not struck, the other is liable under an action for insult."

PART III. To the contrary, in the same book under the title *On Punishments*:

[C. XIV.]

"Let no one suffer punishment for thought."

[C. XV.] Under the title *On Extraordinary Crimes*.

"Solicitors of the marriages of others, and likewise interrupters of marriages, although they cannot obtain the accomplishment of the crime, are punished extraordinarily on account of the will of destructive lust. § 1. He who has persuaded a boy to debauchery, after his companion has been led away or corrupted, or has solicited a woman or girl, or has done anything for the sake of unchastity, furnished a house, or given a price by which another might persuade him, is punished capitally if the disgraceful act was completed, and is deported to an island if it was incomplete. Corrupted companions are afflicted with the supreme punishment."

[C. XVI.] Likewise under the title *On Thefts*.

"It is a common question whether he who took a measure from a heap of grain commits theft of the whole thing, or only of what he took. Ofilius thinks him a thief of the whole heap. For Trebatius says that he who touched someone's ear is also regarded as having touched his whole person. Consequently, one who opened a cask and took a little wine from it seems to have committed theft of the whole. But it is true that he is liable under the action for theft to the extent of what he took. For if anyone opened a cabinet that he could not carry away, handled all the things that were in it, and departed in this way, then returned and took one of them, and was caught before he withdrew to the place for which he had set out, he will be both a manifest and a non-manifest thief of the same thing. But also, if anyone cuts a crop before dawn and handles what he cuts, he is a manifest and a non-manifest thief."

[C. XVII.] Likewise in Book II, under the title *Whatever Law Anyone Establishes*, law 1.

"But these words, 'What one who presides over a jurisdiction shall have established,' we understand with accomplishment, not merely in words. Therefore, if he was prevented when he wished to

establish it and the decree did not have effect, the edict does not apply. For the word 'established' signifies a completed thing and a consummated injury, not one begun."

[CHAPTER XVIII.]

"Punishments," as is read in the Digest under the title *On Punishments*, "are to be softened rather than made harsher by interpretation of the laws."

[GRATIAN.] And therefore they do not extend beyond their own case. But the things said concerning the seizure of virgins, advocates, the crime of treason, or assassins were introduced out of favor for religion and faith and the ruler's hatred of assassins. A person can, however, become guilty of insults in many ways according to their variety. The variety of crimes therefore introduces a variety of punishments. Hence in the Digest under the title *On Punishments*:

[C. XIX.]

[PART IV.] "Either deeds are punished, such as thefts and killings; or words, such as abusive speech and faithless advocacy; or writings, such as forgeries and defamatory writings; or counsels, such as conspiracies or complicity with robbers, and in whatever other cases advising and admonishing is equivalent to the crime. § 1. But these four kinds are to be considered in seven ways: cause, person, place, time, quality, quantity, and outcome. § 2. Cause, as in beatings, which are unpunished when inflicted by a teacher or parent because they are seen to be applied with the intention of correction, not for the sake of insult. They are punished when someone is struck by a stranger in anger. § 3. Person is considered in two ways: that of the one who acted and that of the one who suffered. For slaves are punished differently from free persons for the same offenses; and one who dared something against a master or parent is punished differently from one who did so against a stranger, and one who dared it against a magistrate differently from one who did so against a private person. In considering this matter, account is also to be taken of age. § 4. Place causes the same act to be either theft or sacrilege, and to be expiated either capitally or by a lesser punishment. § 5. Time distinguishes an absentee from a deserter, and a housebreaker or thief by day from one by night. § 6. By quality a deed is either more atrocious or lighter, as manifest thefts are customarily distinguished from non-manifest thefts, a brawl from violent assaults, pillaging from thefts, and wantonness from violence. On this matter Demosthenes, the greatest orator among the Greeks, speaks thus. § 7. Quantity distinguishes a thief from a cattle-rustler. For one who steals one pig will be restrained as a thief; one who steals a herd, as a cattle-rustler. § 8. The outcome is considered, even in deeds done by the most merciful person; although the law punishes no less the one who is found with a weapon for the purpose of killing a human being than the one who has killed. And therefore among the Greeks fortuitous cases were expiated by voluntary exile, as is written in the foremost of the poets."

[C. XX.]

PART V. Thought does not merit punishment under civil law when it is contained within its own bounds. Those acts that by law require an effect are nevertheless distinguished from crimes. For in these nothing but the judgment of the mind is considered. Hence in the Digest under the title *On Repudiations*:

[C. XXI.]

"A divorce—that is, marital separation—is not real unless it is made with the intention of establishing perpetual dissension. Therefore, whatever is done or said in the heat of anger is not otherwise valid unless it becomes apparent from perseverance that it was the judgment of the mind. And therefore, if a repudiation was sent in that heat but the wife returned in a short time, she is not regarded as having been divorced—that is, separated from the marriage." Hence also in the Canons:

[C. XXII.]

"If anyone in anger has cast a charge against someone, etc."

PART VI. [GRATIAN.] Augustine proves that someone is liable on account of counsel just as on account of a deed, saying thus:

C. XXIII. Not only those who kill with their hands, but also those by whose counsel and fraud others are killed, are proved to be murderers.

They dangerously deceive themselves who think that only those who kill a human being with their hands are murderers, and not rather those through whose counsel, fraud, and exhortation human beings are destroyed. For the Jews by no means killed the Lord with their own hands, as it is written: "It is not lawful for us to kill anyone." Nevertheless, the Lord's death is imputed to them because they killed him with their tongue, saying: "Crucify him, crucify him." Hence one Evangelist says that the Lord was crucified at the third hour, another at the sixth, because the Jews crucified him with their tongue at the third hour and the soldiers with their hands at the sixth. Therefore, he who handed a human being over killed him, as the Lord says: "He who handed me over to you has the greater sin." Hence in the Psalm: "The sons of men—their teeth are weapons and arrows, and their tongue a sharp sword." Therefore, let those by whose counsel blood is shed subject themselves to penance if they wish to merit pardon.

C. XXIV. Killers of their brothers, their detractors, and those who hate them are accounted murderers.

Likewise from the letter of Clement, [the first to James]. Blessed Peter used to say that there are three kinds of homicide, and he said that their punishment would be equal. For just as he declared the killers of brothers to be murderers, so he declared their detractors and those who hate them to be murderers, because he who kills his brother, he who hates him, and he who detracts from him are alike shown to be murderers.

C. XXV. In crimes, the will is accounted as the deed.

Likewise Jerome on Isaiah, [c. 33]. Every iniquity, oppression, and injustice is a judgment of blood; and although you do not kill with the sword, you nevertheless kill by the will.

C. XXVI. On the same matter.

Likewise Cyprian, [Treatise IV, *On Mortality*]. Had Cain killed his brother when he offered a gift to the Lord? And nevertheless the provident God condemned beforehand the parricide conceived in his mind. Just as there an evil thought and destructive conception were foreseen by God's providence, so also among God's servants, in whom martyrdom is contemplated and conceived in the mind, a mind

devoted to the good is crowned by God the judge. It is one thing for the mind to be wanting to martyrdom, another for martyrdom to have been wanting to the mind. As the Lord finds you when he calls, so also he judges you, when he himself testifies and says: "And all the churches shall know that I am the searcher of reins and heart."

C. XXVII. He who counsels evil to his brother is a murderer.

Likewise Augustine, [Tractate XLII on John 8]. Do not think that you are not a murderer when you persuade your brother to evil. If you persuade your brother to evil, you kill. And that you may know that you kill, hear the Psalm: "The sons of men—their teeth are weapons and arrows, and their tongue a sharp sword."

C. XXVIII. He who is moved to harm kills.

The same, [Book XIX *Against Faustus*, c. 23]. Homicide forbidden by the law was thought to be nothing other than the killing of the body. The Lord therefore disclosed that every unjust movement toward harming one's brother is reckoned in the class of homicide.

C. XXIX. He who does not steal solely from fear is liable for theft.

Likewise Augustine, [Book of Fifty Homilies, homily 28]. If you do not commit theft for this reason, that you fear lest you be seen, inwardly, in your heart, you have committed it; you are liable for theft, and you have taken nothing.

C. XXX. One who lacks only the opportunity does not therefore offend less.

The same, *On Free Choice*, [Book I, c. 3]. If someone does not even obtain the opportunity to lie with another's wife, but it is nevertheless in some way plain that he desires it and would do it if the ability were given, he is no less guilty than if he were caught in the act itself.

Likewise, as authority testifies: § 1. The will is rewarded, not the work. The will, moreover, is in contrition of heart, while the work is in confession of the mouth.

GRATIAN. It is established more clearly than light that sins are remitted through contrition of heart, not confession of the mouth.

[C. XXXI.] Likewise Prosper, [Book II *On the Contemplative Life*, chapter 7].

"Furthermore, those whose sins lie hidden from human knowledge, neither confessed by themselves nor made public by others, if they are unwilling to confess or amend them, will have God, whom they have as witness, also as avenger. And what does it profit them to avoid human judgment when, if they remain in their evil, they will go, by God's retribution, into eternal punishment? But if they make themselves their own judges and, as though avengers of their own iniquity, exercise here upon themselves the voluntary punishment of the most severe chastisement, they will exchange eternal torments for temporal punishments, and with tears flowing from true compunction of heart they will extinguish the conflagrations of eternal fire."

[C. XXXII.] And below.

"Those will more easily reconcile God to themselves who, not convicted by human judgment, voluntarily acknowledge the crime; who either disclose it by their own confessions or, while others do not know—for they are hidden—pronounce upon themselves a sentence of voluntary excommunication, and, separated from the altar at which they ministered not in spirit but in office, mourn their life as though dead, certain that, once reconciled to themselves by the fruits of effective penance, they will not only receive back from God what they lost but, also made citizens of the heavenly city, will attain everlasting joys."

PART VII. [GRATIAN.] This same point is proved by that prophetic authority: "At whatever hour the sinner shall have been converted and shall have groaned." For it does not say: shall have confessed with the mouth, but only: "shall have been converted and shall have groaned; he shall live with life and shall not die." Hence the prophet Joel says:

[C. XXXIII.]

"Rend your hearts and not your garments."

[GRATIAN.] Showing that sins are remitted through contrition of heart, which is understood in its rending, not through confession of the mouth, which is part of exterior satisfaction, which he called the rending of garments, understanding the whole from the part. Hence also through the same prophet the Lord says:

C. XXXIV.

"Turn to me, and I will turn to you."

[GRATIAN.] Conversion is so called as though it were the turning of the heart from every side. But if our heart is turned from evil to God from every side, it immediately merits the fruit of its conversion, so that God, turned from wrath to mercy, grants indulgence for the sin for which he was first preparing vengeance. Hence it is given to be understood that we can obtain pardon even while the mouth is silent. Hence also those lepers whom the Lord commanded to show themselves to the priests were cleansed on the way, before they came to the priests. From this deed it is surely given to be understood that, before we show our mouths to the priests—that is, confess our sins—we are cleansed from the leprosy of sin. Hence also Lazarus came forth alive from the tomb. He was not first led out of the tomb and afterward raised by the Lord; rather, when the stone by which the tomb was closed had been removed, he came back to life in the sepulcher and came forth alive.

§ 1. Hence also, in order that the Lord might show that the sinner is cleansed not by priestly judgment but by the generosity of divine grace, he cleansed the leper by touching him and afterward commanded him to offer the sacrifice according to the law to the priest. For the leper is touched when the sinner's mind, enlightened by a regard of divine loving-kindness, is pierced with compunction. Hence after his threefold denial Peter, when the Lord looked upon him, poured forth bitter tears, by which he washed away the guilt of his denial. The leper presents himself to the priest when the penitent confesses his sin to the priest. He offers the sacrifice according to the law when he carries out in deeds the satisfaction imposed upon him by the judgment of the Church. But he is cleansed before he comes to the priests, when pardon of sin is granted through contrition of heart before confession of the mouth.

Hence also physicians are denied the power to raise anyone so that the one raised may confess, when it is said through the prophet: "Will physicians raise them, and will they confess to you?" Likewise: "From the dead man, as authority says, as from one who does not exist, confession perishes." Hence that penitent who, terrified by fear of the eighth [day], had cried out, "O Lord, do not rebuke me in your fury," afterward said in supplication: "Save me for the sake of your mercy, because in death there is no one who is mindful of you; but in hell no one will confess to you." If, therefore, no one confesses unless raised, while no one who is a child of eternal Gehenna and worthy of perpetual condemnation lives, it is plain that before anyone confesses a sin, through the grace of inward compunction that person is absolved from the guilt of the transgression for which eternal torments were owed.

§ 2. Likewise, if before anyone confesses that person is raised by the Lord, either the person raised lives while confessing, or after being raised has died again and confesses. But just as the dead person could not confess before being raised, so after the resurrection a dead person is unable to confess. It remains, therefore, that the person raised lives while confessing the sin. Thus that person has the one who raised him present to him and dwelling in him. For, as Augustine says on Psalm 62:

[C. XXXV.]

"One raised in the body lives while the one who raised him is absent. But it is not so with one raised in the soul."

[GRATIAN.] For since God is the life of the soul, while the soul is the life of the body, just as the body cannot live when the soul is absent, so the soul cannot live unless God is present. Therefore, the soul that, living, confesses its sin has God present to it through grace, and the life that is God inhabits it, making it live by inhabiting it. But if he inhabits it, then it has been made a temple of the Holy Spirit; then it has been enlightened; then it has been cleansed from the darkness of sins; then it has ceased to be a temple of the devil—it that comes to the light, whose gaze puts darkness to flight. For, as the Apostle says, there is no agreement of Christ with Belial, no participation of light with darkness, no communion of justice and iniquity, no accord of the temple of God with idols.

Likewise, as Christ says: "Everyone who hates evil acts in the light." But one who acts in the light works with God, as Augustine says. And one who works in Christ is proved to be his son. For everyone is declared to be the son of the one whose works he does. Hence the Lord says to certain persons: "If you are sons of Abraham, do the works of Abraham." Likewise: "You are from your father the devil, because you wish to do the works of your father." But no one can be a son of God and of the devil at the same time. "For no one," as he himself says, "can serve two lords." Likewise, as John says in his epistle, [I, chapter 3]:

[C. XXXVI.]

"He who is born of God does not sin."

[GRATIAN.] Therefore he is not a son of the devil either. For only through sin are we sons of the devil. Therefore we have been transferred from his kingdom into the kingdom of the love of the Son of God, and we have been rescued from the power of darkness and made sons of light. Therefore, since before confession, as has been proved, we are raised through grace and made sons of light, it

appears most evidently that through contrition of heart alone, without confession of the mouth, sin is remitted.

[C. XXXVII.] Likewise.

"Everyone who does not love remains in death."

[GRATIAN.] Therefore, if he lives, he also loves; if he loves, love is in him. But love is not in an evil person. For it is the proper fountain of good things, in which a stranger does not share. Therefore this person has been made good through grace before confession of the sin; thus he is not evil, for someone cannot be good and evil at the same time. But if he is not evil, he is proved not to be a member of the devil; therefore, neither is he worthy of Gehenna, which is owed only to the devil and his members, just as eternal beatitude is prepared only for the members of Christ. Therefore the sin is not remitted in confession, because it is proved already to have been remitted. Confession is therefore made for the manifestation of penance, not for obtaining pardon, just as circumcision was given to Abraham as a sign of justice, not as a cause of justification. Thus confession is offered to the priest as a sign of pardon received, not as a cause of remission to be received.

PART II. § 11. Others, on the contrary, testify, saying that without confession of the mouth and satisfaction in deed no one can be cleansed from sin if that person has had time to make satisfaction. Hence the Lord says through the prophet: "Speak your iniquities, so that you may be justified."

[C. XXXVIII.] Likewise Ambrose in the book *On Paradise*, [chapter 14].

"No one can be justified from sin unless the sin has first been confessed."

[C. XXXIX.] The same, in the [first] sermon for Lent.

"Behold, the acceptable time is now at hand, in which confession frees the soul from death; confession opens paradise; confession gives the hope of being saved. Hence Scripture says: 'Speak your iniquities, so that you may be justified.' By these words it is shown that one who is unwilling to confess one's sins during one's life does not merit to be justified. That confession frees you which is made with penance.

§ 1. True penance is grief of heart and bitterness of soul for the evils that each person has committed. Penance is both to lament past evils and not to commit again deeds that must be lamented."

[C. XL.] Likewise John Golden-Mouth, [in the homily on penance that begins, "With a Provident Mind"].

"Perfect penance compels the sinner willingly to suffer all things. § 1. In that person's heart is contrition, in the mouth confession, in the work complete humility: this is fruitful penance."

[C. XLI.] The same.

"No one can receive the grace of the heavenly God unless that person has been purified from every stain of sin through the confession of penance, through the gift of saving baptism."

[C. XLII.] Likewise Augustine, [in the book *On Continence*, chapter 6].

"No one receives pardon from a graver punishment that is owed unless that person has paid some punishment, even if far less than is owed. For the generosity of mercy is imparted by God in such a way that the justice of discipline is not abandoned."

[C. XLIII.] The same, to Vincentius, [Letter XLVIII].

"Do not think that anyone can pass from error to truth, or from any sin, whether small or great, to correction without penance."

[C. XLIV.] The same, [in the Book of Fifty Homilies, homily 49], on penance.

"Do penance of the kind that is done in the Church, so that the Church may pray for you. Let no one say to himself: I do it secretly; I do it before God; God, who pardons me, knows because I do it in my heart. Was it therefore said without cause: 'What you loose on earth will be loosed also in heaven'? Were the keys therefore given to the Church of God without cause? We make void God's Gospel; we make void the words of Christ; we promise you what he denies—do we not deceive you? Job says: 'If I was ashamed to confess my sins in the sight of the people.' And therefore, if you were unable or unwilling to possess either marital chastity or continence, and you wandered from your purpose, whether from the bond of marriage or the devotion of continence, let there be in you the humility and grief of penance. I speak more openly: let no one say, I did not understand. Because after your wives you stained yourselves by illicit intercourse, if besides your wives you lay with any woman, do penance, etc."

[C. XLV.] Likewise Jerome on Exodus.

PART II. "'And Aaron came,' he says, 'and all the elders of Israel, to eat bread with Moses' father-in-law in the sight of God.' Therefore all things that the saints do, they do in the sight of God; but the sinner flees from the sight of God. Finally, it is written that Adam, after he sinned, fled from the sight of God and, when questioned, replied: 'I heard,' he says, 'your voice, and I hid myself because I was naked.' But Cain also, condemned by God for fratricide, 'went out,' he says, 'from the face of God and dwelt in the land of Naim.' Therefore one who is unworthy of his sight goes out from the face of God. But the saints eat and drink in the sight of God, and all things that they do, they do in the sight of God."

"Examining the present passage still further, I see that those who receive a fuller knowledge of God and are more fully imbued with divine disciplines—even if they do evil—do it before God and in his sight, like him who said: 'Against you alone have I sinned, and I have done evil before you.' What advantage, then, does one who does evil before God have? He immediately repents and says: I have sinned. But one who departs from the sight of God does not know how to be converted and to purge sin by repenting. This, therefore, is the difference between doing evil before God and the sinner's having departed from the sight of God."

[C. XLVI.] Likewise Augustine.

"And immediately he who had said, 'I will make you like Admah and like Zeboiim'—two cities that from their proximity to Sodom drew partnership in a like destruction—says: 'My heart is turned; my soul is troubled within me; I will not act according to the anger of my fury.' Does it not therefore

appear that the Lord Jesus is indignant with us when we sin in order to convert us by the terror of his indignation? His indignation, therefore, is not an execution of vengeance but rather an operation of absolution."

[C. XLVII.] Likewise Ambrose in the book *On Paradise*, [chapter 14].

"'The serpent deceived me, and I ate.' The fault that is followed by an acknowledgment of offenses is pardonable. Therefore the woman who did not keep silent before God but rather confessed the sin was not despaired of. How healing was the sentence that followed! It is good to be condemned in sin and scourged for an offense, so that we may be scourged with human beings. Finally Cain, who wished to deny his crime, was judged unworthy to be punished in his sin, but was sent away without a prescribed punishment, perhaps not so much on account of the greater crime of parricide—for he committed that against his brother—as of sacrilege, because he believed that God could be lied to, saying: 'I do not know; am I my brother's keeper?' And therefore the accusation was reserved for his accuser, the devil, so that he might be scourged with his angels, he who was unwilling to be scourged with human beings.

§ 1. For that shepherd in the Gospel is read to have carried the sheep that had fallen, not cast it away, and Solomon says: 'Do not be excessively just.' For moderation ought to temper justice. For how is someone to present himself to you to be cured whom you regard with disgust, who thinks that he will be an object of contempt, not compassion, to his physician?"

[C. XLVIII.] The same.

"I willingly pardon; I readily grant indulgence; I prefer mercy to sacrifice, because through sacrifice a just person is commended, but through mercy a sinner is redeemed. 'I did not come to call the just, but sinners to penance.' In the law there is sacrifice; in the Gospel there is mercy. The law was given through Moses; grace through me."

[C. XLIX.] Likewise Bishop Leo to Theodore, bishop of Forum Julii, [Letter LXXXIX, otherwise XCI].

"The manifold mercy of God comes to the aid of human lapses in such a way that the hope of eternal life is restored not only through the grace of baptism but also through the medicine of penance, so that those who had violated the gifts of regeneration might, by condemning themselves through their own judgment, arrive at remission of crimes. Thus the safeguards of the divine will have been ordained so that God's indulgence cannot be obtained except through the supplications of priests. For the mediator of God and human beings, the man Christ Jesus the Lord, delivered this power to the prelates of the Church: that they should give the satisfaction of penance to those confessing and, when they had been purified by this saving satisfaction, admit them to the communion of the sacraments through the gate of reconciliation."

And a little later: § 1. "But if any of those for whom we supplicate the Lord, intercepted by some obstacle, should depart from the present life without the gift of indulgence and should end temporal life by the human condition before coming to the appointed remedies, that which he did not receive while remaining in the body he will not be able to obtain when stripped of the flesh."

And after some things: § 2. "But to those who, at a time of necessity and under the pressure of urgent danger, implore the aid of penance and immediately afterward reconciliation, neither satisfaction is to be prohibited nor reconciliation denied, because we can neither place measures upon God's mercy nor define times for it, with whom conversion suffers no delays in pardon."

And likewise: § 3. "Necessity, therefore, is to be aided in such a way that neither the performance of penance nor the grace of communion is denied to them if they are proved to seek it, even after the function of speech has been lost, through indications of unimpaired understanding. But if they have been so burdened by some sickness that they cannot signify in the present what they sought a little earlier, the testimony of the faithful standing around them ought to benefit them, so that they may obtain at the same time the benefit both of penance and of reconciliation. Nevertheless, the rule of the paternal canons is to be preserved concerning the persons of those who sinned by defecting from the Lord's faith."

[C. L.] Likewise Ambrose, [Book I *On Penance*, c. 1].

PART III. "No one can do penance well unless that person has hoped for indulgence. But they deny that communion ought to be restored to those who have fallen by transgression. § 1. God, however, excepted no one's crime, he who forgave all sins."

[C. LI.] Likewise Ambrose, [Book II *On Cain and Abel*, c. 4].

"The Word of God remits sins; the priest is the judge. The priest indeed performs his office and exercises the rights of no power."

And a little later: § 1. "The Lord wished the right both of loosing and of binding to be equal, for he permitted both upon an equal condition. Therefore, one who does not have the right of loosing does not have that of binding either."

And below: § 2. "It is certain that both are permitted to the Church; heresy has neither. For this right was permitted to priests alone. Rightly, therefore, does the Church claim this, which has true priests; heresy cannot claim it, which does not have God's priests."

[C. LII.] Likewise in the same work, [Book I *On Penance*, c. 3].

PART IV. "It can happen that someone, overcome by tortures, denies with speech and worships in the heart. Is the case of one who denies voluntarily the same as that of one whom torments bent toward sacrilege? No. But how unworthy it is, when the favor due to a contest has force among human beings, for it to be asserted not to have force with God! For often in this secular contest of athletes the crowd of human beings has been accustomed to crown together with the victors even the defeated whose contests were proven, especially those whom it saw perhaps robbed of victory by deceit or fraud. And will Christ permit his athletes, whom he has seen yield for a short time to grave torments, to remain without pardon? Will one who also cast some down not have the reward of his labor?"

And below, [c. 6]: § 1. "You say to Peter, when he makes an excuse lest you wash his feet: 'Unless I wash your feet, you will have no part with me.' What fellowship, then, can those have with you who do not receive the keys of the kingdom, denying that they ought to remit sins? They indeed confess

this rightly concerning themselves. For those who do not have Peter's see, which they tear apart by an impious division, do not have Peter's inheritance."

And a little later: § 2. "Sickness of the flesh repels sin, but luxury of the flesh nourishes guilt. The devil is therefore mocked, so that he wounds himself with his own bite and arms against himself the one whom he thought was to be weakened."

And below: § 3. "What harms the body helps the spirit."

And a little later: § 4. "Just as Christ was sacrificed once for all, so, as often as sins are forgiven, we receive the sacrament of his body so that remission of sins may be given through his blood. Therefore it was most evidently commanded by the Lord's preaching that even those guilty of the gravest crime, if they perform penance with their whole heart and with manifest confession of the sin, are to be bathed in the grace of the heavenly sacrament."

[C. LIII.] The same, [Book II *On Penance*, c. 7].

PART V. "However great the stench of the dead man may be, it is all abolished when the sacred ointment has given forth its fragrance, and the dead man rises; the bonds of him who is still in sin are ordered to be loosed; the veil is removed from his face that obscured the truth of the grace he had received. But because pardon was given, he is ordered to reveal his face, to uncover his countenance. For one whose sin has been remitted has nothing of which to be ashamed. For when, amid so great a grace of the Lord and so great a miracle of the divine gift, all ought to have rejoiced, the impious were disturbed and gathered a council against Christ; they also wished to kill Lazarus. Do you not recognize that you are deservedly their successors, whose hardness you inherit? For you too are indignant and gather a council against the Church because you see the dead coming back to life in the Church and being raised by indulgence of sins. And thus, so far as lies in you, through envy you again wish to kill those raised. But Jesus does not revoke his benefits; indeed, he enlarges them by an increase of freedom. The one raised comes back to life solicitously, and, joyful because the grace of resurrection has been celebrated, comes to the supper."

[C. LIV.] Likewise, [in the same place, c. 4].

"He denies to these the grace of his power, which is in the remission of sins, who by a diabolical spirit separate his heavenly power from the Lord's Church, so that he might include the heretics and schismatics of all times, to whom he denies indulgence because every sin concerns individuals and all together."

And below, [c. 5]: § 1. "What wonder is it if you deny salvation to others, you who refuse your own? —although those who seek penance from you differ in nothing from you. For I think that even Judas could not have been excluded from pardon by so great a compassion of the Lord if he had performed penance not among the Jews but before Christ."

And a little later: § 2. "One who does penance ought not only to wash away sin with tears but also to cover and conceal former offenses with amendments, so that sin may not be imputed to that person."

[C. LV.] Likewise in the same work, [Book II, c. 9].

PART VI. "Some seek penance for this reason, that they wish communion to be restored to them immediately. These do not so much desire to loose themselves as to bind the priest. For they do not

so much desire to strip their own conscience as to clothe the priest, to whom it was commanded: 'Do not give what is holy to dogs, nor cast your pearls before swine'; that is: participation in sacred communion is not readily to be granted to unclean spirits."

[C. LVI.] In the same work.

"There are those who think that this is penance: if they abstain from the heavenly sacraments. These are harsher judges against themselves, who prescribe punishment if they decline the remedy; it was fitting for them to grieve on account of the punishment because they were being deprived of heavenly grace."

And a little later: § 1. "You more easily find one who has preserved innocence than one who has fittingly performed penance for sin. Where is there ambition for dignity to be acquired? Where an outpouring of wine? Where the use of the marital union itself? The world is to be renounced, and less is to be indulged even to sleep than nature demands; it is to be interrupted by groans, broken off by sighs, separated by prayers. One must live in such a way as to die to this use of life; a human being must deny oneself and be changed entirely."

And below, [c. 11]: § 2. "No one situated in sins ought to arrogate to oneself the authority or usurpation of the sacraments, because it is written: 'Have you sinned? Be still.'"

(And a little later): § 3. "We say, therefore, that penance is to be done, and to be done at that time when the guilt of luxury cools, and that those situated in captivity to sin ought to be more reverent, not usurpers. For if it is said to Moses when he desires to approach nearer, so that he might drink in knowledge of the heavenly mystery, 'Loose the shoe from your feet,' how much more ought we to strip the feet of our soul from bodily bonds and to release its steps from the fetter of this world?"

And below: § 4. "There is nothing that is a matter of such great grief as when each person, situated under captivity to sin, remembers from what state one fell and from what state one descended, and that one flowed down to bodily and earthly things from that beautiful and fair intention of the divine creation."

[C. LVII.] Likewise Cyprian, [Book IV, Letter 2 to Antonianus].

"But I marvel that some are so obstinate that they think penance should not be given to the fallen, or think pardon should be denied to penitents, when it is written: 'Remember from where you have fallen, and do penance, and perform the former works.' This is certainly said to one who is established to have fallen and whom the Lord exhorts to rise again through works, because it is written: 'Alms deliver from death'—certainly not from that death which Christ's blood extinguished once and from which saving baptism and the grace of our Redeemer freed us, but from that which afterward creeps in through offenses."

[C. LVIII.] Likewise Jerome.

"The importunate woman in the Gospel at last merited to be heard, and when the door had been shut with the servants, although it was the middle of the night, a friend received bread from a friend. God himself, who cannot be overcome within himself by any powers, is overcome by the prayers of the publican. The city of Nineveh, which perished through sin, stood firm through weeping. To what end have these things been repeated with so long a beginning? Clearly, so that, though great, you may

look upon the small; so that, a rich shepherd, you may not despise a diseased sheep. Christ brought the robber from the cross into paradise, and lest anyone ever think conversion too late, he made the punishment for homicide a martyrdom. Christ, I say, joyfully embraces the returning prodigal son, and, when the ninety-nine animals have been left, the one little sheep that had remained is carried upon the shoulders of the good shepherd. § 1. But where a sinner, understanding the wound, hands himself over to the physician to be cured, there a rod is not necessary, but the spirit of gentleness."

PART III. [GRATIAN.] But that pardon is promised to every sinner by Ambrose's authority seems false. For pardon is denied to some either because of the magnitude of the sin or because of the grade of their office. Hence John says in his epistle: "There is a sin unto death: who will pray for it?" Elsewhere it is also read: "Who will heal an enchanter wounded by a serpent?"

[C. LIX.] Likewise.

"If a priest has sinned, who will pray for him?"

[GRATIAN.] But questions of this kind do not always introduce a negation; rather, they denote difficulty or rarity, as in that saying of the Gospel: "Who, do you think, is the faithful and prudent servant, etc.?" Hence also Ambrose: "God, who will be like you?" Certainly not no one, because the Son is the image of the Father. "Who will pray for him?" is to be understood similarly; that is, someone of singular life ought to pray for the one who has sinned in the Lord. "For how would John say that one should not pray for a graver offense, when he had read that Moses prayed and obtained his request where there was voluntary transgression, and when he knew that Jeremiah also prayed?"

§ 1. That saying of John—"There is a sin unto death, etc."—can also be understood otherwise, according to Augustine, so that there is no contradiction between it and the foregoing. For he says: "'There is a sin unto death; I do not say that anyone should pray for it.' Concerning what sin, because it is not expressed, many different things can be thought. But I say that this is the sin: to abandon unto death the faith that works through love." This is also the blasphemy against the Holy Spirit that the Lord asserted in the Gospel is to be remitted neither in this age nor in the future. Whether through delight in sin or despair of pardon someone perseveres in sin unto death, it is just that one who has sinned without end be punished without end. Hence Gregory, [Pope, Book IV of the *Dialogues*, c. 43]:

[C. LX.]

"The wicked would have wished, if they had been able, to live without end so that they could sin without end. Those who never cease to sin while they live show that they desire always to live in sin. It therefore belongs to the great justice of the judge that those who in this life never wished to be without sin should never be without punishment."

PART IV. [GRATIAN.] From these things, therefore, it appears that sin is not remitted without confession of the mouth and satisfaction in deed. For if it is necessary that we speak our iniquities so that we may afterward be justified; if no one can be justified from sin unless the sin has first been confessed; if confession opens paradise and acquires pardon; if only that confession is useful which is made with penance—in which it is noted that confession is one thing and penance another, whether penance is understood as interior or exterior; if one who promises pardon to a person doing penance secretly before God, not before the Church, makes void the Gospel and the keys given to the Church,

and also promises the offender what God denies; if no one can obtain pardon unless that person has paid some punishment for the sin, however small and even if less than is owed; if the power of binding and loosing was delivered by God to priests alone; if no one receives pardon unless one strives to obtain it by the supplications of the Church: it is therefore concluded that no one abolishes the guilt of sin before confession of the mouth and satisfaction in deed.

§ 1. Finally, that it may appear plainly that no one is cleansed from sin without confession, let us take our beginning from the very beginning of the human race. The first parents, corrupted by the sin of transgression, were questioned by the Lord concerning their guilt, so that by confessing they might destroy the sin that they had committed by transgressing. But the serpent was not questioned concerning the guilt, because it was not being called back to life through confession. Cain also, when he had added fratricide to the first transgression, was similarly questioned by the Lord concerning his guilt when it was said to him: "Where is your brother Abel?" But because, being proud, he was unwilling to confess his sin and rather attempted by a mendacious denial to deceive the Lord, saying, "Am I my brother's keeper?" he was judged unworthy of pardon. Hence, plunged into the depth of despair when he said, "My iniquity is greater than that I should merit pardon," he went out, a wanderer and fugitive, from the face of the Lord, signifying that those who conceal their sin instead of confessing it are held unworthy of a regard of divine compassion.

The kings also who, led by ignorance, had offended against Abraham merited to be healed only when he prayed. In this it is figured that the passions of conduct are healed only by the prayers of the Church. The Lord also commanded Moses that if leprosy appeared, whether in skin, in a house, or in a garment, it should be shown to the priest and, separated according to his decision, should by his judgment be declared contaminated or cleansed. Saul also, when he was tormented by an evil spirit, could not return to the function of a sound mind unless David first took up the psaltery and played before him, and in this way the devil ceased from tormenting him. In this it is shown mystically that whoever is handed over to the devil on account of sin cannot be rescued from his dominion unless David—that is, the Church—takes up the psaltery and plays before him; that is, makes him a participant in spiritual grace by admonishing him savingly, praying devoutly for him, and presenting to him examples of good work, and thus restrains the devil from invisibly tormenting him.

David also, when he had committed adultery and homicide, did not hear from the prophet, "The Lord has removed your sin from you," before he confessed the sin itself. For he first confessed the sin when the prophet rebuked him, and afterward he heard: "The Lord has removed your sin from you." Ahab also, when he heard the sentence of God threatening him for the shedding of innocent blood, clothed himself with sackcloth, making satisfaction to God through penance. Hence the Lord said to Elijah: "Because Ahab has revered my face, I will not bring evil in his days." When the Ninevites heard, "Yet forty days, and Nineveh will be overthrown," they performed penance by decree of the king and princes, saying: "Who knows whether God may turn and pardon and leave a blessing after him?" Through this humility of satisfaction they merited to escape the imminent overthrow. By their examples it is evidently shown that no one obtains pardon from God unless one first makes satisfaction to him through penance. Nebuchadnezzar, changed from a rational mind into a bestial disposition on account of his pride and departing as a fugitive from his kingdom, did not regain the kingdom before, having been converted, he proclaimed God. Finally the Israelite people, handed over

to captivity for the guilt of their transgression, did not merit to be freed before, confessing their sins, they received pardon through the prayers of Daniel and the other saints.

§ 2. In the Gospel also, those coming to John to be baptized by him with the baptism of penance first confessed their sins, showing that each person ought, by condemning one's sins, to confess them and promise the renewal of a better life if one desires to receive the grace of regeneration. Christ also is read to have raised some from the dead, cleansed others from leprosy, enlightened others, and strengthened the limbs of others that were loosened by paralysis. Nevertheless, the petition of their own voice or that of friends is read to have preceded the healing of them all. For, from Luke's account, we learned that he was first asked concerning Peter's mother-in-law before he restored her to health. But that leper whom the Lord cleansed as he descended from the mountain first cried out to him: "Lord, if you will, you can cleanse me"; afterward he cleansed him by touching him. When the blind man cried out to him, "Have mercy on me, Son of David," Jesus asked him: "What do you wish me to do for you?" He said: "Rabboni, that I may see the light." He also heard concerning three dead persons, whom he restored to life when others prayed. He also heard of a fourth when a disciple reported it; but because there were no living persons to pray for him, he did not merit to be raised.

§ 3. By these examples it is most evidently given to be understood that one whom the stain of graver guilt infects cannot be healed unless confession from that person's own mouth or the intercession of the Church assists. Hence that penitent who had first merited to be scourged by keeping silent about his sins afterward, when corrected, said: "Because I kept silent, my bones grew old while I cried out all day." Hence Christ says in the person of his members: "Let not the depth swallow me, nor let the pit press its mouth over me." Augustine explains this, saying: "The pit is the depth of human iniquity. If you fall into it, it will not close its mouth over you if you do not close your mouth. Therefore confess and say: From the depths I have cried to you, O Lord, and you will escape. It will close over the one who in the depth despises, from whom, being dead as though nonexistent, confession perishes." Hence the same prophet says: "Enter his gates in confession," showing that someone can reach the gates of mercy only through confession of sin.

§ 4. Hence also blessed John the Baptist and our Savior took the beginning of their preaching from penance, saying: "Do penance, for the kingdom of heaven will draw near," showing that no one can reach the heavenly kingdoms unless one first takes care to make satisfaction to God through penance. Hence also in the Acts of the Apostles it is read that believers came to the Apostles, announcing their deeds.

§ 5. From all these things it is easily shown that without confession no one can merit pardon. Hence also Pope Leo says, [Letter LXXVIII, otherwise LXXX, to the bishops of Campania]:

[C. LXI.]

"For a penitent, confession suffices, which is offered first to the Lord and then to the priest, who approaches as an intercessor for the offenses of penitents."

[C. LXII.] The same, [to Rusticus, bishop of Narbonne, Letter XC, otherwise XCII, c. 7].

"Penance that has been delayed is not to be denied when it has been sought more earnestly, so that in this way the wounded soul may come to the medicine of indulgence."

[C. LXIII.] Likewise Augustine in the sermon on penance, [otherwise the book *On the Medicine of Penance*].

"It does not suffice to change one's conduct for the better and to withdraw from past evils unless satisfaction is also made to the Lord for those things that were done, through the grief of penance, through the groan of humility, through the sacrifice of a contrite heart, with alms and fasts cooperating."

[C. LXIV.] Likewise Ambrose, [on Luke 1].

"God knows how to change a sentence if you know how to amend an offense."

[C. LXV.] Likewise Pope Leo, [Letter XC, otherwise XCII, to Rusticus, c. 8].

"It is indeed one thing to demand back just things that are owed, another to despise one's own things from love of perfection. One seeking pardon for unlawful things ought also to abstain from many lawful things, as the Apostle says: 'All things are lawful for me, but not all things are expedient.' Hence, if a penitent has a case that perhaps ought not to be neglected, that person will better seek an ecclesiastical judgment than a forensic one."

[C. LXVI.] Likewise Jerome on Malachi.

"Let him who is a holy priest and eats the Lord's Passover be girded with the belt of chastity, and let him hear with the Apostles: Let your loins be girded, and lamps burning in your hands. But let one who is a sinner and whom his own conscience bites be girded with sackcloth, and let him lament either his own offenses or those of the people, and let him enter the church from which he had gone out on account of sins, and let him lie down or sleep in sackcloth, so that by austerity of life he may compensate for the past delights through which he had offended God."

[C. LXVII.] The same on the prophet Amos, [at c. 9].

"If we do penance, he too will repent of his sentence. Again, according to the same Jeremiah, he promises prosperous things if we do penance. But if we are dissolved by negligence, he will also repent of his promise and will change the things promised. Of this matter we can have Samaria and Jerusalem as an example, of whom some were freed from imminent punishments, while others lost the things that had been promised to their fathers."

[C. LXVIII.] The same on Daniel, [at c. 4].

"'Therefore, let my counsel be pleasing to you, and redeem your sins with alms and your iniquities with mercies toward the poor, if perhaps God may pardon your offenses.' If he foretold a sentence that cannot be changed, how does he exhort him to alms for the poor and mercy so that God's sentence may be altered? This is easily solved by the example of King Hezekiah, whom Isaiah said was to die, and of the Ninevites, to whom it had been said: 'Yet forty days, and Nineveh will be overthrown.' And nevertheless, at the prayers of Hezekiah and Nineveh, God's sentence was changed. Again, he asserts that he promises indulgence to one doing good, and elsewhere in Jeremiah God says that he threatens evils over a nation and, if it does good, changes the threats through clemency. Again he asserts that he promises to one acting, and, if that person does evil, he says that he changes his sentence, not toward human beings but toward works that have been changed. For

God is not angry with human beings but with vices, and when these are not in a human being he by no means punishes what has been changed."

"Let us also speak otherwise. Nebuchadnezzar therefore performed mercies toward the poor according to Daniel's counsel, and for that reason the sentence against him was delayed until the twelfth month. But because afterward, walking in the palace of Babylon, he boasts and says, 'Is this not great Babylon, which I built as a house of the king by the strength of my power and for the glory of my name?' he lost the good of mercy through the evil of pride. 'Perhaps God may pardon your offenses.' Since blessed Daniel, foreknowing future things, doubts concerning God's sentence, those who boldly promise pardon to sinners do a rash thing. And nevertheless it is to be known that pardon is promised in return to Nebuchadnezzar when he does good works."

[C. LXIX.] The same.

"See the kindly Lord mixing mercy with severity and weighing the measure of the punishment itself with a just and merciful balance. He did not hand over the offenders forever, but for as much time, he says, as they served Chushan-rishathaim, that is, eight years. Learn this also, O hearer, whoever you are who are conscious to yourself of some error: for as much time as you know that you erred, for as much time as you offended, humble yourself to God for no less time and make satisfaction to him in the confession of penance. Do not wait for Chushan-rishathaim to humble you and for necessity to extort penance from you against your will; rather, anticipate the hardness of that torturer yourself, because if you amend yourself, if you correct yourself, the Lord is loving and merciful, and tempers vengeance from one who anticipates it by repenting."

"But let us also consider that, as long as those who had been handed over for their offenses served Chushan-rishathaim and did not cry out to the Lord, no one was raised who could save them. But when they cried out to the Lord, then the Lord raised a savior of Israel and saved them."

[C. LXX.] The same, [Jerome on chapter 5 of the Epistle to the Ephesians].

"The Church of Christ is that which has neither spot nor wrinkle nor anything of this kind. Therefore, one who is a sinner and stained by some filth cannot be called of the Church of Christ or be said to be subject to Christ. But it is possible that, just as the Church that formerly had wrinkle, spot, and uncleanness was afterward restored, so also the sinner may run to the physician—because the healthy have no need of a physician, but those who are ill—so that they may cure his wounds and he may become of the Church, which is the body of Christ."

[C. LXXI.] The same, [on Amos 1].

"'For three crimes of Damascus and for four, I will not convert it.' According to tropology we can say this. The first sin is to have thought things that are evil. The second is to have assented to perverse thoughts. The third is to have completed in deed what you decreed in the mind. The fourth is not to do penance after sin and to be pleased with oneself in one's offense."

[C. LXXII.] The same, [Letter LXV to Pammachius and Oceanus].

"The second plank after shipwreck is to confess one's guilt simply. You imitated the one erring; imitate also the one corrected. We erred as young men; let us be amended as old men. Let us join groans and couple tears."

[C. LXXIII.] The same.

"Because the divine nature is merciful and loving and more inclined toward indulgence than toward vengeance, because it does not will the death of the sinner but that the sinner be converted and live, if anyone after a lapse into sins converts oneself to true penance, that person will quickly obtain pardon from the merciful judge."

[C. LXXIV.] The same on Malachi.

"Lest perhaps, mindful of sin, they return more slowly, he says, 'Yet I will cause you to dwell in tabernacles as in the days of festivity,' so that what baptism does, penance may do, and they may dwell in the tabernacles of the Savior, that is, in the Church."

[C. LXXV.] The same, [on Daniel 9].

"Jeremiah had foretold seventy years of the desolation of the temple, after which the people would return again to Judea and the temple and Jerusalem would be built there. This does not make Daniel negligent but rather provokes him to pray, so that what God promised through his clemency he may fulfill through their prayers, lest negligence beget pride and pride beget offense. § 1. Finally, in Genesis we read that one hundred and twenty years were appointed for penance before the flood. Because for so much time—that is, for one hundred years—they were unwilling to do penance, he by no means waits for the other twenty to be completed, but brings on earlier what he had threatened for later. Hence it is said to Jeremiah on account of the hardness of the heart of the Jewish people: 'Do not pray for this people, because I will not hear you.' And to Samuel: 'How long do you mourn over Saul? I have rejected him.' Therefore, in ashes and sackcloth he asks that what God had promised be fulfilled, not because he was unbelieving concerning future things, but lest security prepare negligence and negligence prepare offense."

C. LXXVI. By works of mercy we do not buy God, but redeem ourselves.

Likewise Ambrose in the sermon for the Sunday concerning Abraham. "The medicine of mercy takes away great sins." We have many aids by which we redeem our sins. You have money: redeem your sin. The Lord is not for sale, but you yourself are for sale. You were sold by your sins; redeem yourself by your works, redeem yourself by your money. Money is cheap, but mercy is precious. § 1. "Alms," he says, "deliver from sin."

GRATIAN. Crimes, therefore, are redeemed by alms.

[C. LXXVII.] Likewise John Golden-Mouth, [Homily IX on chapter 6 of the Epistle to the Hebrews].

"This is the stronger medicine, which works most powerfully in penance. Just as in the precepts of medicine a remedy indeed receives many herbs but one most dominant herb, so also in penance this herb is more dominant and more powerful, and itself effects the whole. For hear what divine Scripture said: 'Give alms, and behold, all things are clean for you.'"

[C. LXXVIII.] Likewise Ambrose in [Book I] *On Penance*, [c. 2].

"God draws no boundary, who promised his mercy to all and granted to his priests permission to release without any exception. But let one who has aggravated the guilt aggravate the penance. For

greater crimes are washed away by greater weeping."

[C. LXXIX.] The same, [Book II *On Penance*, c. 10].

"Let mother Church weep for you and wash away your guilt with tears. Let Christ see you grieving and say: 'Blessed are those who mourn, for you will rejoice.' He loves that many pray for one. Finally, in the Gospel, moved by the widow's tears, because very many were weeping for her, he raised her son."

[C. LXXX.] The same, [in the same Book II, c. 11].

"God cast Adam out of paradise immediately after the guilt. He did not delay, but immediately separated him from delights so that he might do penance. He immediately clothed him with a tunic of skins, not silk."

[C. LXXXI.] Likewise Augustine to Felicianus.

PART V. "There are three acts of penance, which Your Learning recognizes with me. One is that which gives birth to the new human being, until through saving baptism the washing away of all past sins takes place. For everyone who has already been established as master of one's own will, when coming to the sacraments of the faithful, cannot begin a new life unless that person repents of the old life. From this penance infants alone are immune when they are baptized. For they cannot yet use free choice. Nevertheless, for their consecration and remission of original sin, the faith of those by whom they are offered benefits them.

§ 1. But the second penance is that whose performance is to be undertaken through this whole life, which we pass in mortal flesh, with perpetual humility of supplication. First, because no one desires eternal, incorruptible, and immortal life unless that person repents of this temporal, corruptible, and mortal life. For someone is not born into new life through the sanctification of baptism in such a way that, just as there one puts away all past sins, so one also immediately puts away the mortality and corruption of the flesh itself.

§ 2. The third is the act of penance that is to be undertaken for those sins that the law of the Decalogue contains and concerning which the Apostle says: 'For if we judged ourselves, we would certainly not be judged by the Lord.'"

And below: § 3. "There is also the daily penance of humble and good faithful persons, in which we strike our breasts, saying: 'Forgive us our debts, etc.' Nor do we wish those things to be forgiven us which we do not doubt were forgiven in baptism, but certainly those that, although small, nevertheless frequently creep in through human frailty. If these were gathered against us, they would so burden and oppress us as one great sin. For what difference does it make to shipwreck whether a ship is covered and overwhelmed by one great wave, or whether water gradually creeping into the bilge and abandoned and disregarded through negligence fills and sinks the ship? On account of these things fasts, alms, and prayers keep watch. In these, when we say, 'Forgive us, as we also forgive,' we manifest that we have something to be forgiven us; and, humbling our souls in these words, we do not cease to perform daily penance, as it were."

[C. LXXXII.] Likewise Gregory.

PART VI. "If the Lord removed so detestable a sin of David, why is it that after all the things that were said to him afterward by the Lord through the prophet concerning the same sin, he endured so much? But without doubt the Lord does not leave an offense without vengeance. For either the penitent person punishes it in oneself, or God strikes it while taking vengeance together with the person. Therefore sin is by no means spared, because it is in no way released without vengeance. Thus David merited to hear after confession, 'The Lord has removed your sin,' and nevertheless, afterward afflicted by many torments and fleeing, he discharged the guilt of the fault that he had perpetrated. In the same way we are absolved from the fault of the first human being by the water of salvation. Nevertheless, even after being absolved, washing away the guilt of that same fault, we still die carnally, because he cuts away our offenses either through us or through himself even when he releases them. For he strives by temporal affliction to wipe away from his elect the stains of iniquities that he does not wish to see in them perpetually."

[C. LXXXIII.] Likewise Augustine, [On the Merits and Remission of Sins, book II, c. 34].

"Just as the first human beings, by afterward living justly, are rightly believed to have been freed through the Lord's blood from the last judgment, yet by that life did not merit to be recalled to paradise, so also the flesh of sin, even if, after sins have been remitted, a human being has lived justly in it, does not immediately merit not to undergo that death which it drew from the propagation of sin. Something of this kind has been intimated to us concerning the patriarch David in the Book of Kings. When the prophet had been sent to him and threatened him with evils that would befall him because of the sin he had committed, he merited pardon by confession of the sin, the prophet replying that that shameful crime and deed had been remitted to him; and nevertheless the things with which God had threatened him followed, so that he was thus humbled by his son. And now, therefore, it is asked: if God had threatened him because of that sin, why, after the sin was remitted, did he fulfill what he had threatened him with? The only answer—most rightly—is that the remission of that sin was made so that the man would not be hindered from receiving eternal life; but that example of the threat followed so that the man's piety might be exercised and proved in that humiliation. Thus also God inflicted bodily death upon the human being because of sin, and after the remission of sins he did not take it away, for the sake of exercising justice."

C. LXXXIV. In performing penance, the measure of sorrow rather than of time is to be considered.

The same in a homily on penance. PART VII. In performing penance, where an offense of such a kind has been committed that the one who committed it is separated even from the body of Christ, the measure not so much of time as of sorrow is to be considered: "For God will not despise a contrite and humbled heart." But because the sorrow of one heart is very often hidden from another and does not come to the knowledge of others except through words or any other signs, although it is before him to whom it is said, "My groaning is not hidden from you," times of penance are rightly established by those who preside over churches, so that satisfaction may also be made to the church in which those sins are remitted. For outside it they are not remitted. Therefore, when the wound of sin and the attack of disease are so great that the medicines of the Lord's body and blood must be

deferred, each person ought, by the authority of the bishop, to remove oneself from the altar in order to perform penance, and by the same authority to be reconciled.

C. LXXXV. The same in the same work, [homily L, c. 11].

Let a person judge oneself voluntarily while one can, and change one's conduct for the better, lest, when one will no longer be able, one be judged by the Lord against one's will. And when one has pronounced against oneself the sentence of the most severe but most useful medicine, let one come to the bishops through whom the keys are administered to that person in the church; and, as a son now beginning to be good, with the order of the mother's members preserved, let one receive from the prelates of the sacraments the measure of one's satisfaction, devout and suppliant in offering the sacrifice of a troubled heart. Yet let one do what profits not only that person for receiving salvation, but also others as an example, so that, if one's sin is not only to that person's grave harm but also to so great a scandal of others, and the bishop judges this expedient for the church's welfare, one should not refuse to perform penance in the knowledge of many or before the multitude of the whole people, nor resist, lest through shame one add swelling to a lethal and deadly wound.

§ 1. For many are corrected, like Peter; many are tolerated, like Judas, etc.

C. LXXXVI. The mortification of vices rather than abstinence from foods is necessary for a penitent.

Likewise Jerome. The canons do not therefore prescribe the measure of time in performing penance sufficiently openly for each crime, so as to say concerning every one how each is to be amended; rather, they establish that it is to be left to the judgment of an understanding priest, because before God not so much the measure of time as that of sorrow avails, nor so much abstinence from foods as the mortification of vices. For this reason they command that the times of penance be shortened in accordance with the faith and manner of life of penitents, and they judge that they are to be prolonged in accordance with negligence. Nevertheless, measures of penance have been imposed for certain faults.

C. LXXXVII. Likewise John Chrysostom, [that is, the author of the Imperfect Work on Matthew, homily 40].

Who has ever seen a cleric quickly performing penance? And if, when detected, he humbles himself, he does not therefore grieve because he sinned, but is confounded because he lost his glory.

PART VII. GRATIAN. By these authorities it is asserted that no one can be cleansed from sins without penance and confession by one's own voice. Hence the foregoing authorities, by which it seemed to be proved that pardon is granted by contrition of heart alone, are to be interpreted otherwise than they are expounded by those persons. For the satisfaction of tears and a threefold confession of love for the Lord followed Peter's denial, by which he wholly blotted out the sin of the threefold denial. A determinate satisfaction for sin was therefore not necessary for him, whose entire lifetime was being spent in obedience to his Creator. For he imitated that prophetic saying, "Turn away from evil and do good," and that saying of Isaiah, "Let the impious abandon his way, and the iniquitous man his thoughts, etc." Beyond these things nothing is required from a sinner. Therefore, by that authority of Pope Leo the satisfaction of penance is not denied to be necessary for every

delinquent, but only for the one who, imitating blessed Peter, utterly renounces this world and wholly mortifies within oneself the tinder of all vices.

§ 1. Likewise, that saying of John Chrysostom, "Tears wash away the fault that shame prevents one from confessing with the voice," and that other saying which he writes in the letter to the Hebrews, "I do not tell you to betray yourself publicly, nor to accuse yourself before others; rather, I wish you to obey the prophet who says, 'Reveal your way before the Lord.' Therefore confess your sins; pronounce your offenses before the true Judge with prayer, not with the tongue but with the memory of your conscience, and only then hope that you can obtain mercy. If you have your sins continually in mind, you will never harbor evil in your heart against your neighbor," are not to be understood as saying that sins are remitted without confession of the mouth, but without public satisfaction. For secret sins are purged by secret confession and hidden satisfaction, nor is it necessary that we confess anew the things that we have once confessed to the priest; but with the tongue of the heart, not of the flesh, we ought continually to confess them before the true Judge. Hence the same John Chrysostom also says: "But now, if you remember your sins, frequently pronounce them in God's sight, and implore his clemency for them, you will blot them out more quickly. But if you now forget your sins, then you will remember them unwillingly, when they are made public in the whole world and brought forth in the sight of all—of both your friends and your enemies, and of the holy angels and the heavenly powers. For it was not to David alone that he said, 'You did it in secret; I shall make it manifest to all'; rather, this is also said to all of us."

§ 2. The saying of Prosper is understood similarly: "Those who of their own accord acknowledge their crime and either disclose it by their own confessions, or, while others do not know, as hidden persons, etc." "While others do not know," that is, while they confess their sin to these persons by a hidden confession and do not manifest it publicly. Likewise that saying of the prophet, "I said, I shall confess, and you remitted"—that is, you judged remissible—"the impiety of my sin." Thus also that saying of Augustine is understood: "Great is the piety of God, that he remitted sins upon the promise alone," that is, judged them remissible. Likewise: "A vow is accounted as the deed when the capacity for the deed is lacking." Hence the vow of confession is accounted as the deed of the voice when the capacity for confession is lacking. Likewise: "The will is rewarded, not the deed," is understood thus: the will makes the deed rewardable; the deed does not make the will rewardable. Likewise that saying, "In whatever hour the sinner shall be converted": one is said to be converted who is turned wholly; one is turned wholly whose deed, voice, and thought labor in the mortification of sin just as they previously served iniquity. Thus also that saying is understood: "Be converted to me, etc." Likewise, "Rend your hearts and not your garments," is said to those who trust that they can please God by exterior satisfaction alone, with no interior satisfaction preceding. Likewise all the things adduced concerning the cleansed lepers or the raised Lazarus are to be referred to contrition of heart, not to the pardon of remission. For obstinacy of mind and contempt for confession are a certain death of impiety and leprosy of pride, from which each person revives when, through grace, sorrow for the fault and a vow of confession are inspired in that person.

§ 3. To this article also pertain those things that have been said concerning persons who live, or walk in the light, or possess the love of God, or have been made dwellings of the Holy Spirit: namely, so that each person is said to have attained all these things by the contrition of heart that one has, not by the full remission of sin that one has not yet found. For just as in baptism sin is remitted and

nevertheless its punishment is reserved, so through contrition of heart each person is said to be raised by God, although still held by the guilt of sin. Therefore no one is proved by the foregoing authorities or arguments to be cleansed from sin without confession of the mouth and satisfaction of deed.

PART II. § 4. On the contrary, that authority of John Chrysostom and Prosper seems to be wrested against the author's meaning. For it is not said, "I do not tell you to accuse yourself publicly," but, "I do not tell you to accuse yourself before others." So also Prosper does not say "while everyone does not know," but simply "while others do not know." Hence it is most evidently given to be understood that sins can be blotted out without confession of the mouth. But those things said as an exhortation to penance and confession do not seem contrary to this opinion. For either they are words of exhortation, not command, such as, "Confess your sins to one another," or, if any were spoken as commands, they are to be referred not to confession of the mouth but of the heart, not to exterior but to interior satisfaction.

§ 5. For one penance is interior, another exterior. Interior penance is that of which Augustine says, "Everyone who has been established as master of one's own will cannot begin a new life unless that person repents of the old life." Likewise Peter is read to have said concerning the same thing in the Acts of the Apostles, "Perform penance, and let each one of you be baptized." This is understood to have been said concerning interior, not exterior, penance. But concerning exterior penance Ambrose says on the letter to the Romans: "The grace of God in baptism does not require groaning or weeping, nor any work, but confession of the heart alone, and freely pardons all things." Therefore, whatever things have been said as commands concerning penance are to be referred, as we said, not to exterior but to interior penance, without which no one was ever able to be reconciled to God.

§ 6. But that saying of Augustine by which someone is denied to obtain pardon unless that person has first discharged however small a punishment for sin is not found contrary to this opinion. For no one is asserted to be cleansed from sin unless that person has suffered the punishment of sin. But it is one thing to confess sin to a priest and to make satisfaction for the sin at his judgment, and another to confess to God in the heart and to punish the sin within oneself by secret satisfaction. For penance is, as Augustine says, sorrow of heart by which each person punishes in oneself what one has transgressed. Concerning this satisfaction the same again says, expounding Psalm 50: "Because I know my iniquity. Do not punish it, because I punish it; forgive, because I acknowledge it and do not dissemble." And below: "God so gives mercy that he preserves truth, so that the sins of the one whom he forgives are not unpunished. For he forgives the one who punishes oneself. It is mercy that the person is freed; truth, that the sin is punished." The same on Psalm 84: "Truth springs from the earth, that is, confession from a human being, so that the person may accuse oneself; and thus justice has looked down from heaven, so that the publican, confessing, returned justified. Justice looks down, as though God said: Let us spare this one, because this one does not spare oneself; let us forgive, because this one acknowledges. Therefore justice looked down from heaven, that is, justification was given by God to the penitent."

§ 7. Therefore this secret satisfaction for light or hidden crimes is to be offered to God, and the things believed to be expiated in this way are proved not to be released without punishment. But those things said concerning public satisfaction or confession of the mouth are to be understood concerning public and manifest crimes. For the sins of Nebuchadnezzar, which the prophet counseled

to be redeemed by works of mercy and alms, and also the sins of the Ninevites, which were expiated by public satisfaction, were known to all. And a public offense, as Augustine testifies, needs a public remedy.

§ 8. Therefore, by the foregoing authorities, manifest satisfaction and confession of the mouth are proved to be offered for manifest crimes. But hidden sins are not proved necessarily to be confessed to a priest and expiated at his judgment.

PART III. § 9. On the contrary, the things said in assertion of this opinion are supported in part by truth and in part lack weight. For it is supported by the firmest reasoning that no sin can be remitted without contrition of heart, and that hidden sins ought to be expiated by secret satisfaction and public sins by manifest penance. But that any grave offense is expiated without confession of the mouth, if the opportunity of confessing was not lacking, is proved altogether contrary to authority. For how, according to the authority of Pope Leo, can indulgence not be obtained without the supplications of priests, if we can be cleansed from sin without confession of the mouth? For who will supplicate for a sin that one does not know?

§ 10. Likewise, how, according to Augustine, does the one who performs penance without the judgment of a priest frustrate the keys of the church, if one obtains indulgence for a crime without confession of the mouth?

§ 11. Likewise, how, according to Ambrose, is the right of binding and loosing believed to have been permitted by the Lord to priests alone, if each person at one's own judgment binds oneself by sinning, or, by secret penance according to Prosper, pronounces against oneself a sentence of excommunication, and after satisfaction reconciles oneself to God or to his altar without priestly judgment?

§ 12. These things do not accord with the foregoing authorities, but are proved contrary by the examples of many. For the Lord raised the ruler of the synagogue's daughter after the crowds had been cast out; nevertheless, she was not restored to life except in the presence of the girl's mother and father, and also Peter, James, and John. In this we are instructed morally that secret sins, which are understood through the girl's death, are believed to be remitted by the Lord only by the supplications of the church, which is designated through the girl's mother and father, and by the ministry of priests, who are understood through Peter and the others.

§ 13. Likewise in Leviticus: "One who has consecrated one's house or field to the Lord by a vow cannot redeem it except by the shekel of the sanctuary, and with the priest, not the person oneself, computing the number of years until the jubilee." In this we are similarly taught that whoever has wished through penance to offer to the Lord the house of conscience or field of conduct, and by the price of good works to redeem oneself from the vain conduct of one's life, cannot do this except by the shekel of the sanctuary, that is, by the works of penance prescribed by sacred Scripture. Hence blessed John, to the crowds coming to him, did not say simply, "Perform penance," or "fruits of penance," but added "worthy," so that, namely, a quality of good works may be offered in proportion to the quality of sins. For the fruit of the good work of one who has transgressed nothing or little ought not to be equal to that of one who has committed great things. The former, as conscious of no crime, grants oneself the use of lawful things; the latter, as burdened by many, ought to abstain even from lawful things. In the jubilee full remission was granted. Hence through it perfect remission of

sin is figured. Therefore the priest computes the number of years until the jubilee when the times of penance are determined at his judgment, through which each person may find full remission of sin. For, as Hesychius says on the same passage, each person is not fully cleansed from sin immediately after the penance has been determined.

§ 14. Therefore, since, as is gathered from the foregoing, the times of penance are determined at the priest's judgment, it appears most evidently that sins are not remitted without confession by one's own voice. For who will prescribe times of penance for anyone unless that person has first taken care to manifest one's sins to him?

§ 15. Likewise, silence concerning sin arises from pride of heart. For each person desires to conceal one's sin so that one's iniquity may not become manifest to others, so that one may not be regarded outwardly among human beings as such as one has already exhibited oneself in the divine sight. No one doubts that this arises from the fountain of pride; for it is a species of pride to wish to seem just when one is a sinner. And the one who, in imitation of the first parents, either strives to lighten one's sins by evasion in words or, like Cain, seeks wholly to suppress one's sin by keeping silent is convicted as a hypocrite. But where pride or hypocrisy reigns, humility cannot have a place. Without humility, however, it is not permitted to hope for pardon. Therefore, where there is silence of confession, pardon for the crime is not to be hoped for. This same thing is proved by the authority of Augustine, who says in the Book on Penance, [c. 10]:

[C. LXXXVIII.]

"Let the one who repents repent altogether, and show sorrow by tears; let that person present one's life to God through a priest; let one forestall God's judgment by confession. For the Lord commanded those who were to be cleansed to show their faces to the priests, teaching that sins must be confessed by bodily presence, not manifested through a messenger, not through writing. For he said, 'Show your faces,' and 'all,' not one for all. Do not appoint another as a messenger to offer for you the gift established by Moses; rather, you who sinned through yourselves, you yourselves also blush. For shame itself has a share in remission. The Lord commanded this out of mercy, so that no one should repent in secret. For in this, that the person speaks through oneself to the priest and conquers shame by fear of the one offended, pardon of the crime comes to pass. For through confession what was criminal in action becomes venial; and, even if it is not purified immediately, nevertheless what one had committed as mortal becomes vital. For one who, mastering shame, denied to God's messenger none of the things committed has offered much satisfaction. For God, who is merciful and just, just as he preserves mercy in justice, so also justice in mercy. It is a work of mercy to remit sins to one who sins, but it is necessary that the just one have mercy justly. For it is necessary that he consider not only what the person grieves over but in what manner, whether the person is worthy, I do not say of justice, but of mercy. For justice alone condemns; but the one who seeks grace by spiritual labor is worthy of mercy. For the mind labors by suffering shame; and because modest shame is a great punishment, one who blushes for Christ becomes worthy of mercy. Hence it is clear that the more persons to whom one confesses the baseness of the crime in hope of pardon, the more easily one obtains the grace of remission. For the priests themselves can now profit more, can spare those confessing more. For those whom they remit, God remits. For Lazarus, already raised from the tomb, he offered to the disciples to be loosed, showing through this the power of loosing granted to the priest. For he said, 'Whatever you loose upon earth will be loosed also in heaven'; that is: I, God,

and all the ranks of the heavenly host, and all the saints in my glory praise and confirm with you those whom you bind and loose. He did not say 'those whom you think you bind and loose,' but 'those upon whom you exercise a work of justice or mercy.' But I do not acknowledge your other works against sinners.

§ 1. Therefore, one who wishes to confess sins so as to find grace should seek a priest who knows how to bind and loose, lest, when he has proved negligent concerning himself, he be neglected by the one who mercifully admonishes and seeks him, and lest both fall into the pit which the fool refused to avoid.

§ 2. Accordingly, the power of confession is so great that, if a priest is lacking, one should confess to one's neighbor. For it often happens that a penitent cannot be ashamed before a priest, since neither place nor time yields one to the person desiring him. And although the one to whom the person confesses does not have the power of loosing, nevertheless the one who confesses the baseness of the crime to a companion becomes worthy of pardon because of the desire for a priest. For the lepers were cleansed while they were going to show their faces to the priests, before they reached them. Hence it is clear that God looks to the heart when necessity prevents persons from reaching the priests. Indeed, often they seek them while healthy and joyful; while they seek, they die before they arrive. But God's mercy is everywhere, which knows how to spare even the just, although they would not be loosed so quickly as by a priest.

§ 3. Therefore, one who confesses altogether should confess to the better priest whom one can find. If the sin is hidden, let it suffice to bring it to the knowledge of the priest, so that the offering of the gift may be pleasing. For few who might see were present at the raising of the ruler's daughter. For she had not yet been buried, had not yet been carried outside the gate of the city, had not yet been carried outside the house into public knowledge. He raised inwardly the one whom he found inwardly, after leaving only Peter, James, and John, and the girl's father and mother, in whom the priests of the church are figuratively contained. But as for those whom he found outside, it must be considered how he raised them. For a crowd was weeping after the widow's son. Martha and Mary were weeping, supplicating for their brother. The crowd that had followed Mary was also weeping, moved by Mary's tears. In this we are taught that, for those sinning publicly, not their own merit but the merit of the church suffices."

C. LXXXIX. That confession which is offered first to God and then to a priest suffices.

Likewise Pope Leo, [letter LXXVIII, otherwise LXXX]. PART IX. Although the fullness of faith that, because of fear of God, does not fear to blush before human beings seems laudable, nevertheless, because not everyone's sins are of such a kind that those whose sins demand penance do not fear to publish them, let the objectionable custom be removed, lest many be kept from the remedies of penance while they either blush or fear to disclose their deeds to their enemies, by which they could be struck down under the provision of the laws. For that confession suffices which is offered first to God, then also to the priest, who approaches as an intercessor for the offenses of penitents. For then more persons can be provoked to penance if the conscience of the one confessing is not published to the ears of the people.

GRATIAN. We have briefly set forth openly the authorities and supports of reasons upon which each opinion concerning confession and satisfaction rests. But to which of these one should rather adhere is reserved to the reader's judgment. For each has wise and religious men as supporters. Hence Theodore, Archbishop of Canterbury, says in his Penitential:

[C. XC.]

"Some say that sins ought to be confessed to God alone, as the Greeks do. Others judge that they are to be confessed to priests, as almost the whole holy church does. Each is done within the holy church not without great fruit, provided only that we confess our sins to God, who is the remitter of sins—and this belongs to the perfect—and say with David, 'I made my offense known to you, and I did not hide my injustice. I said, I shall confess against myself my injustice to the Lord, and you remitted the impiety of my sin.' Nevertheless, the Apostle's institution is to be followed by us: that we confess our sins to one another and pray for one another, so that we may be saved. Therefore the confession made to God alone, which belongs to the just, purges sins. But that which is made to the priest teaches how those sins are to be purged. For God, the author and giver of salvation and holiness, very often supplies this medicine of his penance by an invisible administration, and very often by the activity of physicians."

Distinction II

GRATIAN. PART I. Since, however, a discourse concerning penance has once begun, it seems that the matter must be taken up again somewhat more deeply, setting forth openly the opinions of different persons fortified by sure authorities. Some say that penance is useful only once. For it is one and cannot be repeated. But if it is repeated, the preceding penance was not penance. And even if, by the sentence of that person's judge, the person's sins deservedly seem to have been remitted, nevertheless, in the presence of him to whom all future things are present, they are never held to have been remitted, because that sentence of the true priest was not observed: "Go, and now sin no more." Likewise: "Behold, you have been made well; now sin no more, lest something worse happen to you." Likewise, from the Eighth Synod:

C. I. One who afterward falls back into the same vice has not utterly extinguished its first cause.

If anyone has once been marked by the vice of envy or contention and falls again into that very thing, let that person know that the first cause from which envy or contention is born lies stored in the inner marrow. Therefore, it is necessary that the person be cured by contrary and opposed things, that is, by the practice of humility. The exercises of humility are these: if one subjects oneself to lowlier duties and assigns oneself to more unworthy ministries. For in this way the vice of arrogance and human glory can be cured, so that, once the affection has been habituated to humility, it no longer falls into the offense of arrogance and vainglory. But a similar cure is applied to every individual vice of this kind.

GRATIAN. Likewise, without charity no sin is remitted to an adult. But one who will at some time sin criminally does not possess charity. Hence Augustine to Count Julian:

[C. II.]

"Charity that can be abandoned was never true."

[C. III.] The same on the First Letter of John, [tractate 8].

"Has charity taken root? Be secure; nothing evil can proceed from it."

[C. IV.] Likewise Gregory in the Moralia.

"'Love is strong as death.' For love is compared to the power of death, because it utterly kills, to delight in the world, the mind that it has once seized."

[C. V.] Likewise Prosper in Book III of the Contemplative Life, [c. 13].

"Charity is, as it seems to me, a right will, wholly turned away from all earthly and present things, inseparably joined and united to God, kindled by a certain fire of the Holy Spirit, from whom it is and to whom it is referred; foreign to every defilement, ignorant of corruption, subject to no vice of mutability, exalted above all things that are loved carnally, the most powerful of all affections, eager for divine contemplation, always unconquered in all things, the summit of good actions, the salvation of conduct, the end of the heavenly precepts, the death of crimes, the life of virtues, the strength of those fighting, the palm of the victors, the soul of holy minds, the cause of good merits, the reward of the perfect; without it no one has pleased God, with it no one either could sin or will be able to sin; fruitful in penitents, joyful in those advancing, glorious in those persevering, victorious in martyrs, active in absolutely all the faithful, from which whatever good work exists will live."

Likewise: § 1. "This is true, genuine, perfect charity, which the holy Apostle calls a more excellent way. For just as no one arrives where one is tending without a way, so without charity, which has been called the way, human beings cannot walk, but wander."

Likewise, [in the same work, c. 15]: § 2. "Therefore, if we show charity to God and to our neighbor from a pure heart, a good conscience, and an unfeigned faith, we easily resist sin, abound in all good things, despise the allurements of the age, and accomplish with love all things that are difficult or even harsh to human frailty, provided nevertheless that we love God with perfect charity, which is from him for us, from our whole heart and whole soul and all our strength. For each person sins from that part from which one loves God less; if we love him from the whole heart, there will be nothing in us from which we serve the desires of sin. And what is it to love God except to be occupied with him in mind, to conceive the affection for enjoying the sight of him, hatred of sin, weariness of the world, and also to love one's neighbor, whom he judged must be loved in himself; to preserve the lawful measure in that love and not overturn the established order of love? Those overturn the order of love and do not preserve the measure of loving who either love the world, which is to be despised, or love their bodies, which are to be loved less, more; or do not love their neighbors as themselves; or perhaps do not love God more than themselves."

Likewise: § 3. "Our body, because it is a part of us, is to be loved by us for this purpose: that we may naturally take counsel for its welfare and frailty and act so that, orderly subjected to the spirit, it may attain eternal salvation after receiving immortality and incorruption."

Likewise: § 4. "But we then love our neighbors as ourselves if we love them not because of some advantages of ours, not because of benefits hoped for or received, not because of affinities or blood

relationships, but for this alone: that they are participants in our nature."

Likewise: § 5. "Not only those whom a degree of blood joins to us are to be believed our neighbors; rather, all human beings who participate in our nature, as I have said, are to be believed our neighbors."

Likewise: § 6. "Accordingly, we love all our neighbors as ourselves when we take counsel for their welfare, as for our own, toward good conduct and the attainment of eternal life; when we consider ourselves in their sins and dangers and come to their aid just as we would wish aid to be given to us, or, if capacity is lacking, retain the will to give aid. Therefore the whole of love for one's neighbor is this: that you will for your neighbor the good that you wish to be conferred upon yourself. But those love God more than themselves who, for love of him, do not spare their temporal welfare, hand themselves over to tribulations and dangers, are prepared to be stripped of their own possessions, to become exiles from their homeland, and to renounce parents, wives, and children; and, to say the whole, not only do not shrink from bodily death but even receive it willingly, choosing to depart from the life of their body rather than from God, the life of their life."

[C. VI.] Likewise Bede on John, [at c. 1].

"Meanwhile it must be asked how it was a special sign for recognizing the Son of God that the Spirit descended upon him and remained.

§ 1. What great thing is it for the Son of God that the Spirit is asserted to remain in him? It must be noted that the Holy Spirit always remained in the Lord; but in holy human beings, as long as they bear a mortal body, in part he remains forever, and in part he withdraws, to return. For he remains with them so that they persist in good actions, love voluntary poverty, attain meekness, mourn from desire for eternity, hunger and thirst for justice, embrace mercy, purity of heart, and the tranquillity of peace; but also so that they do not fear to suffer persecution for the observance of justice and desire to persist in alms, prayers, fasts, and the other fruits of the Spirit. But he withdraws for a time so that they do not always have the capacity to cure the sick, raise the dead, cast out demons, or even prophesy. He remains always so that they may possess virtues and may themselves live wondrously. He comes for a time so that through signs of miracles it may shine forth also to others what sort of persons they are within."

[C. VII.] Likewise the Apostle, [1 Corinthians 13].

"Charity never falls away."

[C. VIII.] Likewise Augustine on the First Letter of John.

[Tractate 3.] "The invisible anointing is the Holy Spirit; the invisible anointing is charity, which, in whomsoever it shall be, will be like a root for that person, which cannot wither although the sun burns; it is nourished by the sun's heat, not withered."

[C. IX.] Likewise Gregory on Ezekiel, [homily III].

"The winged living creatures do not turn back at all when they advance, because the holy preachers so pass from earthly actions to spiritual things that they are thereafter by no means turned back to the things they had abandoned." And a little later: "'No one putting his hand to the plow, etc.' For to

put one's hand to the plow is, as it were, to open the earth of one's heart by a certain plowshare of compunction to bring forth fruits. But one looks backward after the plow who, after beginnings of a good work, returns to the evils that one abandoned. Because this does not at all happen to God's elect, it is rightly said now through the prophet, 'They did not turn back when they advanced.'" And a little later: "Hence also Paul says, 'But one thing: forgetting the things that are behind, and stretching myself toward the things that are ahead, I pursue toward the palm of the heavenly calling.' For, stretched toward the things ahead, he had forgotten those behind, because, despising temporal things, he sought only those that are eternal."

[C. X.] The same in the same work, homily V.

"'They did not turn back when they advanced,' because all the elect so tend toward good things that they do not return to perpetrate evils. 'For the one who has persevered to the end, this one will be saved.' And, as is said through Solomon, 'The path of the just, like a shining light, proceeds and grows unto the perfect day.' For in their mind good desire and understanding of the inward light are already a part of the day; but because they advance in virtue until the end of life, they then come to the perfect day, when, having been led to the heavenly kingdoms, they will no longer have anything less in that light which they desire."

[C. XI.] The same in the same work, homily V.

"The movement and mobility of the Spirit can be understood thus. In the hearts of the saints he always remains in respect of certain virtues; but in respect of certain others he comes in order to withdraw, and withdraws in order to come. For in faith, hope, and charity, and in the other good things without which one cannot reach the heavenly homeland—such as chastity, humility, justice, and mercy—he does not desert the hearts of the perfect. But in the power of prophecy, eloquence of teaching, and display of miracles, he is at times present to the elect and at times withdraws himself." And a little later: § 1. "Accordingly, in those virtues without which one does not at all reach life, the Holy Spirit remains in the hearts of his elect; hence he is rightly called stable. But in those through which the power of holiness is shown, he is at times mercifully present and at times mercifully withdraws." Hence Ambrose on the Second Letter to the Corinthians, [at c. 6]:

[C. XII.]

"That charity which abandons in adversity is feigned."

PART II. GRATIAN. Therefore, from the foregoing it appears that charity, once possessed, is not thereafter lost. But one who has once possessed charity will thereafter be unable to sin criminally, so that the impossibility is referred to grace, not to nature. Augustine testifies that one possessing charity cannot sin criminally, saying in the Book of Fifty Homilies, homily 8:

[C. XIII.]

"Because cupidity is the root of all evils and charity is the root of all good things, and the two cannot exist together, unless one has been torn out by the root, the other cannot be planted. Someone strives in vain to cut off the branches if one does not endeavor to tear out the root."

GRATIAN. Therefore, since one who sins criminally is proved never to have possessed charity, it is evidently gathered that a person who at any time sinned criminally does not perform penance. Hence

Augustine:

[C. XIV.]

"Charity is the water of which the Lord says in the Gospel, 'Whoever drinks from the water that I shall give will not thirst forever.'"

GRATIAN. Therefore, since the reprobate, consigned to eternal fires, will thirst forever, how will that person drink the living water, or how will one drink the water springing up into eternal life, who, sunk like lead into the depths, pays the penalties of eternal condemnation?

Likewise: Without charity, how will anyone be able to possess true contrition of heart? How, therefore, remission of offenses? If they are not remitted, how are absolutely all of them not to be exacted for punishment?

Likewise the Lord says, "Amen, amen, I say to you: one who believes in me has eternal life." Therefore one who does not have eternal life does not believe in Christ. But one who possesses charity believes in Christ. For to believe in Christ is to tend toward him by loving. This is the faith, as the Apostle defines it, that works through love; remission of offenses is promised to this alone. But if charity cannot be separated from the faith of Christians, to which alone pardon is promised, how did one who did not possess charity possess the faith of Christians, that is, believe in Christ? How, therefore, did that person receive pardon of offenses? If one did not receive it, how are absolutely all one's works not to be struck with eternal torments?

Likewise the Lord says, "I am the living bread that descended from heaven; if anyone eats from this bread, that person will live forever." Therefore one who does not live forever did not eat the living bread; but one who did not eat did not believe in him. For to eat the living bread is to believe in Christ, that is, to tend toward him by loving. Since, therefore, the reprobate did not believe in him whom one did not eat, and thus did not possess the faith of Christians, by which alone sins are released, how—if the Lord lives, to whom the Father gave all judgment—will that person escape the judgment of perpetual condemnation for all sins, not only actual but also original?

PART III. § 1. These things said concerning charity can be understood concerning perfect charity, which, once possessed, is never lost. But the beginnings of charity are nurtured so that they may grow, and are trampled so that they may fail. For no one suddenly becomes highest; rather, in a good manner of life, which does not exist without charity, each begins from the least things so as to arrive at great ones. Accordingly, there are degrees not only between virtue and virtue, but also in the same virtue. Hence Gregory writes on Ezekiel, [homily XV], saying:

[C. XV.]

"When the Lord receives the holy church, he is recognized in its steps, because his glory is declared through its increases. For to the degree that the holy church advances by ascending, God becomes known to human beings from its virtue. Concerning these steps blessed Job also speaks, saying, 'Through each of my steps I shall proclaim him.' For one proclaims the almighty Lord through each of one's steps who, through the increases of the virtues that one receives, always renders him praise for his loving-kindness. If there were not certain steps in the heart's ascent, the Psalmist would not say, 'They will walk from virtue to virtue.' Nor is it remarkable if there are steps from virtue to virtue,

when each individual virtue itself is increased by certain steps, as it were, and is thus led through increases of merits to the summit.

§ 1. For one thing is the beginning of virtue, another its advancement, another its perfection. For if even faith itself were not led to its perfection by certain steps, the holy Apostles would by no means have said, 'Increase our faith.' And a certain man came to the Lord who wished his son to be cured; but when asked whether he believed, he replied, 'I believe, Lord; help my unbelief.' Consider, I ask, what is said. If he believed, why did he say 'unbelief'? But if he knew that he possessed unbelief, how did he believe? Rather, because through the hidden inspiration of grace faith grows by the steps of its merits, at one and the same time the person who did not yet believe perfectly both believed and was unbelieving.

§ 2. The Lord describes these steps under the name of the harvest, saying: 'Thus is the kingdom of God: as if a man casts seed upon the earth and sleeps and rises night and day, and the seed sprouts and grows while he does not know it. For the earth bears fruit of itself, first the blade, then the ear, then the full grain in the ear; and when it has produced the fruit from itself, immediately he puts in the sickle, because the time of harvest is present.' A person casts seed upon the earth when one plants a good intention in one's heart; and after one has cast the seed, one sleeps, because one now rests in the hope of the good work. But one rises by night and day, because one advances amid adverse and prosperous things; and the seed sprouts and grows while the person does not know it, because, even when one is still unable to measure one's increases, the virtue once conceived is led to advancement. And the earth bears fruit of itself, because, as grace precedes, the human mind spontaneously rises to the fruit of good work. But this same earth produces first the blade, then the ear, then the full grain in the ear. To produce the blade is to possess the still-tender state of a good beginning. But the blade comes to the ear when the virtue conceived in the mind draws itself onward to the advancement of good work. And it bears the full grain in the ear when the virtue has now advanced so far that it is capable of robust and perfect work. But when it has produced the fruit from itself, immediately he puts in the sickle, because the time of harvest is present. For almighty God, when the fruit has been produced, sends the sickle and cuts down his harvest, because, when he has led each person to perfect works, he cuts off that person's temporal life by a sentence sent forth, so as to lead his grain to the heavenly barns. Therefore, when we conceive good desires, we cast seed into the earth. When we begin to work right things, we are the blade. But when we grow toward the advancement of good work, we come to the ear; and when we are made firm in the perfection of that same work, we now bring forth the full grain in the ear.

§ 3. For Peter had been the blade when, at the time of the Passion, following the Lord through love, he feared to confess him before the voice of a maidservant. There was already greenness in his mind, because he believed in the Redeemer of all; but, still very flexible, it was trampled by the foot of fear. He had now risen into the ear when, at the angel's announcement, he saw living in Galilee the one whom he had feared to confess when that one was about to die. But he reached the full grain in the ear when the Spirit came from above and strengthened his mind in love of him, and he was so made firm that, when beaten, he despised the powers of the persecutors and freely preached his Redeemer amid the lashes.

§ 4. Accordingly, let no one who is perceived still to be in the tenderness of mind toward a good purpose be despised, because God's grain begins from the blade so that it may become grain.

Therefore the man comes to the gate because our Lord and Redeemer leads his entering members to himself; and he ascends through its steps, because, as we advance, he is exalted the more insofar as he is recognized to be high and incomprehensible. For he is said to ascend in the steps of our virtues because he is shown to us to be so much more sublime, the more our mind is separated from the lowest things."

Hence Augustine also says in the Book on Free Choice, [c. 17]:

[C. XVI.]

"One who wishes to perform God's commandments and cannot do so indeed already possesses a good will, but one that is still small and weak. That person will be able when one possesses a great and robust will. For when the martyrs performed those great commandments, they certainly performed them with a great will, that is, with great charity, concerning which the Lord himself says, 'No one has greater charity, etc.'" And a little later: § 1. "The apostle Peter did not yet possess that charity when he denied the Lord three times out of fear. And nevertheless, although small and imperfect, charity was not absent from him when he said, 'Lord, I shall lay down my soul for you.'"

The same on the Letter of John, [tractate 5]: § 2. "If anyone possesses such charity that the person is prepared even to die for one's brothers, charity is perfect in that person. But is it already completely perfect as soon as it is born? It is born so that it may be perfected; when it has been born, it is nurtured; when it has been nurtured, it is strengthened; when it has been strengthened, it is perfected; when it has come to perfection, what do you say? 'For me to live is Christ and to die is gain.'"

[C. XVII.] In the same work, [tractate IX].

"Just as a bristle draws in the thread, so fear draws in charity; charity grows, fear diminishes, and conversely."

[C. XVIII.] In the same work.

"Perhaps charity has been born in you, but is not yet perfect; do not despair; nurture it, lest perhaps it be choked."

[C. XIX.] The same to Jerome, [letter XXIX].

"Charity is perfect in some, imperfect in others; but the most perfect charity cannot be possessed in this life."

[C. XX.] Likewise Gregory.

"If my discourse finds in your hearts some spark of the gratuitous love of God, nurture that very spark; take care to summon yourselves to increase it." And a little later: "Blow upon it; nurture it within yourselves, so that, when it has grown and made a most worthy flame, it may consume the wood of all cupidities."

GRATIAN. Conversely, it is also proved that degrees exist in virtue because the degrees of sin itself also appear evidently. For just as no one suddenly becomes the highest, so no one suddenly becomes base. Hence also Augustine in Book I of the Sermon of the Lord on the Mount, [c. 23]:

[C. XXI.]

"Just as sin is reached by three degrees—suggestion, delight, and consent—so there are three differences of sin itself: in the heart, in the deed, and in custom, like three deaths. One is as though in the house, that is, when consent is given in the heart to lust; another as though now carried outside the gate, when consent proceeds into the deed; the third when the mind is pressed beneath the mass of an evil custom, as though now putrefying in the tomb. Whoever reads the Gospel recognizes that the Lord raised these three kinds of dead persons."

[C. XXII.] Likewise Gregory, [book XXV of the Moralia, c. 16].

"It must certainly be known that sin is committed in three ways. For it is perpetrated either through ignorance, or weakness, or deliberate purpose; and one sins more gravely through weakness than through ignorance, but much more gravely through deliberate purpose than through weakness."

[C. XXIII.] The same, [book XXI of the Moralia, c. 3].

"Among these things it must be known that it is one thing for the mind to suffer from the temptation of the flesh, but another when it is bound to delights through consent. For it is very often struck by a depraved thought, but resists. Very often, however, it conceives something perverse within itself and even turns it over through desire. And certainly an unclean thought does not defile the mind when it strikes, but when it subjugates the mind to itself through delight.

Hence the eminent preacher says, 'Let no temptation apprehend you except a human one.' For human temptation is that by which we are very often touched in thought even unwillingly, because the fact that unlawful things sometimes come to mind is certainly something we possess within ourselves from the weight of corruptible humanity. But temptation is now demonic and not human when the mind binds itself through consent to that which the corruptibility of the flesh suggests."

[C. XXIV.] Likewise Jerome, [at c. 1 of Amos].

"For three crimes of Damascus, etc.," as above.

GRATIAN. It is not remarkable if degrees are said to exist in virtue, since the degrees of sin also are shown so evidently.

§ 1. Accordingly, this charity, which in Peter before the denial was the blade and which is born in each person before it is strengthened, is lost and restored before its perfection. Hence Augustine in the Book on Correction and Grace, [c. 7]: "Whoever have been distinguished from that original condemnation by this bounty of divine grace, there is no doubt that the Gospel is procured for them; and when they hear, they believe and persevere to the end in the faith that works through love. And if at any time they wander outside the course, being corrected they are amended; and some of them, even if they are not reproved by human beings, return to the way they had abandoned, and the rest."

[C. XXV.] In the same work.

"'God's firm foundation stands, having this immovable seal: The Lord knows who are his.' Their faith, which works through love, assuredly either does not fail at all, or, if there are any whose faith fails, they are restored before this life is ended; and, after the intervening iniquity has been blotted out, perseverance to the end is reckoned to them."

[C. XXVI.] In the same work, [c. 9].

"None of them ends this life changed from good to evil."

[C. XXVII.] In the same work.

"For such persons who love him, God makes all things work together for good—altogether all things to such an extent that, even if some of them deviate and wander outside the course, he will cause this very thing also to profit them for good."

[C. XXVIII.] Likewise the Apostle to the Galatians, [c. 5, v. 6].

"Circumcision is nothing, nor is uncircumcision, but faith that works through love. And this was formerly in you, because you were running well through the works of faith and from love."

[C. XXIX.] Likewise to the Hebrews, [c. 6, v. 10].

"God is not so unjust that he forgets your work, etc."

GRATIAN. The work by which they made all their things common—and this from love, and this for God's glory. Behold a threefold good, as if he were saying: Formerly you performed many things for which, if you repent of evils, God will do good to you. Also, when the Apostle reproved the Romans and Galatians, he proves that by the merit of faith they attained remission of sins, sanctification in the Holy Spirit, and the justice of good work; all these things either were never truly in them without charity, or those who gloried in the works of the law possessed true charity, from which they afterward fell. Likewise Augustine says concerning any adult:

[C. XXX.]

"Remove charity; hatred holds possession."

Likewise: § 1. "Everyone who does not love hates."

Likewise in the Gospel: § 2. "No one can serve two lords; for either one will hate the one and love the other, or one will uphold the one and despise the other."

GRATIAN. But Adam, since he was created by the Lord at a manly age, before he was tempted by the devil—while his wife was being formed from his side, while, rapt in ecstasy, he was present in the angelic court, while, awakening, he foretold the future sacraments of Christ and the church—possessed either charity or hatred. But if he possessed hatred, the devil was not the author of our sin. Likewise, if he was created by God without charity, he by no means received God's likeness in his creation. Likewise, if he was created without charity, he was not made just and innocent by God; for a creature capable of reason and free choice cannot participate in justice and innocence without charity. It is therefore gathered that before Adam sinned he possessed charity, without which he could not be just and innocent. Hence Augustine in Genesis According to the Letter, [book VI, c. 24]:

[C. XXXI.]

"How are we said to be renewed if we do not receive what the first human being lost? We plainly receive this, because [we receive] the justice from which he fell through sin." And a little later, [c. 7]: § 1. "'Stripping yourselves of the old human being, put on the new, who is renewed in the knowledge of faith according to the image of him who created that person.' Adam lost through sin this image

impressed upon the spirit of the mind." And after a few words: § 2. "That first robe is justice itself, from which Adam fell."

[C. XXXII.] The same in homily XI.

"When the prince of all vices saw Adam, made from the clay of the earth in God's image, adorned with chastity, ordered by temperance, and splendid with charity, he stripped the first parents of those gifts and such great goods and killed them together. For when he had taken chastity and continence from the human being, he subjected the person to his dominion." And a little later: § 1. "After temperance had been lost, Adam became intemperate; after charity had been lost, he was found evil."

[C. XXXIII.] Likewise Ambrose to Sabinus, [book VI, letter 14].

"When Adam was alone, he did not transgress, because his mind adhered to God."

[C. XXXIV.] The same to the same, [in the same book, letter 42].

"The first human being, God's fresh work, a constant conversational partner, had been planted with the virtues of the saints."

[C. XXXV.] The same in the Hexaemeron, [book VI, c. 7].

"That soul is painted by God which possesses within itself the shining grace of the virtues and the splendor of piety. That soul is well spoken of in which the likeness of divine operation shines forth. That soul is well painted in which there is the splendor of glory and the image of the Father's substance. According to this image, which shines, the painting is precious. According to this image Adam was depicted before sin; but when he fell, he put it away."

[C. XXXVI.] The same on Flight from the World, [c. 4].

"To be like God is to possess justice and wisdom and to be perfect in virtue."

[C. XXXVII.] The same on the Blessed Life, [c. 5].

"The wise person is never empty, but always possesses within oneself the raiment of prudence and can say, 'I put on justice; I clothed judgment.' For these are the interior coverings of the mind, which no one else can take away, except when one's own fault strips someone. Thus, finally, Adam, having been stripped, was found naked."

[C. XXXVIII.] The same in the Book on Isaac and the Soul, [c. 5].

"But neither was the first Adam naked, whom innocence clothed."

[C. XXXIX.] The same in the Book on Paradise, [c. 13].

"'When they knew that they were naked.' And indeed they were naked before, but not without a covering of virtues."

GRATIAN. That also is objected which every authority proclaims: if he had remained as he was before sin, he would have been translated into the glory that the saints will possess; but no adult enters without charity. Therefore he possessed charity.

§ 1. Likewise, an objection is made concerning Moses, whose faith the Apostle, commending it in his letter to the Hebrews, proclaimed his merits with worthy praises: when Moses denied that he was a son of Pharaoh's daughter, preferring to be afflicted with his brothers rather than to enjoy the pleasure of a temporal palace; when, suffering with his brother, he buried the Egyptian in the sand; when, fearing the animosity of the king, he left Egypt; when, fortified by divine aid, he despised the king's fury and led the people out of Egypt in the power of signs. With what praises are all these things to be extolled if charity was not in him then, when a branch of good work has no greenness within itself unless it proceeds from the root of charity? But how did he not possess charity, to whom the Lord spoke face to face, as a person is accustomed to speak with one's friend? How did he not possess charity who, supplicating for the people, said, "Either forgive it this offense, or blot me out of your book"? Did he not love his neighbor, who, interposing himself for the people, freed them from destruction? Did he not love God, who, raging against the worshipers of the calf for his sake, ground the head of that calf into powder and, mixed with water so that it might be cast out into the privy, gave it to the Israelites to drink, ordering some of its worshipers to be struck with the sword so that he might reconcile to God the people whose destruction would otherwise have been greater? Did he not possess charity, from whose spirit the Lord took and placed it upon the seventy elders of Israel? Yet, at the water of contradiction, doubting God's power or his kindness, although he had promised the other things with sure faith, when about to bring forth water from the rock, he exclaimed distrustfully, saying, "Shall I be able to bring water forth for you from this rock?" Let this seem light to no one, since as punishment for that offense it was said to him and Aaron by the Lord: "Because you did not hearken to my voice so that you might glorify me before the children of Israel, you will not bring this people into the land that I gave them."

§ 2. Did Aaron not possess charity when he was given as a helper to his brother, so that he would be his mouth to the people and so that signs would be done through him in Egypt? Yet he afterward gave his consent to the people in the worship of the calf. Did he not possess charity when, alone from the entire multitude of the children of Israel, he was chosen by the Lord to exercise the pontificate before him? If he did not possess charity, he was not good; but if he was not good, why was he chosen by the Lord before the others as pontiff? Did he not possess charity when, with the censer, he placed himself against the conflagration on behalf of the people and appeased the wrath? And nevertheless, as was said before, he afterward provoked the Lord's wrath against himself at the water of contradiction.

§ 3. Did David also not possess charity, upon whom the Spirit of the Lord was directed from the day of his anointing? Or perhaps it will be said that it was directed upon him so that from then he would possess the grace of prophesying, not so that from it he would receive the grace of divine love? It plainly seems absurd to think this concerning the one of whom the Lord says, "I have found a man according to my heart." How also did he not possess charity, who spared the one seeking his soul and, because he cut off the hem of that person's cloak, afterward his heart struck him heavily, as he cried out, "Whom do you persecute, O king of Israel—a dead dog and a single flea?" How did he not possess charity, who bore the death of his enemy so very heavily? How did he not possess charity, who did not drink the water from the cistern of Bethlehem offered to him at the peril of his men, but poured it out before the Lord? How did he not possess charity, who, mocked by Michal, the daughter of Saul, because he had danced before the ark of the Lord while striking the cithara and psaltery, said, "I shall play and become more vile in my eyes"? If he did not possess charity, with what security of

conscience did he invoke against himself, saying, "If I have rendered evils to those repaying me, let me deservedly fall empty before my enemies"? If he did not possess charity, with what temerity did he ask to be judged justly, saying, "Judge me, O Lord, according to my justice and according to my innocence over me"? Likewise: "Judge me, O Lord, because I have entered in my innocence." And nevertheless, after so many and innumerable other proofs of divine and heavenly love, how gravely he transgressed no one who has heard of his adultery with Bathsheba and his killing of Uriah does not know. If he offered his penance to the Lord without charity, he did not possess true contrition of heart. How, therefore, did he dare to promise to the Lord the sacrifice of a contrite heart and troubled spirit, saying, "If you had wished for sacrifice, I would surely have given it; you will not delight in burnt offerings. A sacrifice to God is a troubled spirit, etc."? Finally, since no remission is promised by God to false penance, how did he merit to hear from the prophet, "Your sin has been remitted," if he did not possess true contrition of heart? Accordingly, it appears evidently that he then possessed charity and, from charity, offered to the Lord the sacrifice of a contrite heart and troubled spirit. Otherwise he would rashly have asked, "Turn your face away from my sins," and the other things contained in the same psalm, unless hatred of evil and love of good had provoked him to the humility of penance. Concerning him also Saint Ambrose writes in the Book on the Soul and Isaac, [c. 3], saying: "Holy David had fled the hatreds of King Saul, not by leaving the lands, but by avoiding the contagions of a cruel and proud king, because his mind adhered to God," to whom no adult can adhere without charity. And nevertheless, how gravely he afterward transgressed in the census of the people was indicated by the punishment for that offense.

§ 4. Likewise, according to this opinion, one who transgresses criminally did not obtain true remission of sins in baptism, whether the person approached baptism in the years of infancy or as an adult, because the person did not possess the love of God, without which no one ever finds grace. And thus, according to the heresy of Jovinian, if anyone has truly been reborn from water and the Spirit, that person cannot afterward sin criminally; or, if one sins criminally, one is proved to have been reborn by water alone, not by the Spirit. That passage from the Letter of John seems to agree with this opinion: "Everyone who is born of God does not commit sin, because his seed remains in that person; and one cannot sin because one is born of God. In this the children of God and the children of the devil are manifest." And at the end of the letter: "Everyone who is born of God does not sin, but the generation of God preserves that person, and the evil one does not touch that person." But how much this authority of the Apostle favors that opinion, and how contrary to truth that sect of error is, Jerome shows, writing against Jovinian, [book II, at the beginning]:

[C. XL.]

"For if, he says, 'everyone who is born of God does not sin and cannot be tempted by the devil,' how does he command them to take care lest they be tempted, saying, 'Little children, keep yourselves from idols'? And again in the same letter: 'If we say that we do not have sin, we seduce ourselves, and the truth is not in us. If we confess our sins, he is faithful and just, so as to remit our sins to us and cleanse us from all iniquity. If we say that we have not sinned, we make him a liar, and his word is not in us.' I judge that blessed John, a baptized man, wrote to baptized persons, and that every sin is from the devil. He confesses himself a sinner and hopes for remission of sins after baptism. And my Jovinian says, 'Do not touch me, because I am clean.' What, then? Does the Apostle speak things contrary to himself? By no means. For in the same place he immediately declared why he said this:

'My little children, I write these things to you so that you may not sin; but if anyone sins, we have an advocate with the Father, Jesus Christ the just, and he is the propitiation for our sins—not for ours alone, but also for those of the whole world. And in this we know that we have known him: if we observe his commandments. One who says that one knows God and does not keep his commandments is a liar, and the truth is not in that person. But one who keeps his word, truly in this person the charity of God is perfect. In this we know that we are in him. One who says that one remains in him ought oneself also to walk just as he walked.' For this reason I write to you, my little children: everyone who is born of God does not sin. Therefore I tell you not to sin, and to know that you remain in the generation of the Lord for as long as you have not sinned; indeed, those who persevere in the generation of the Lord cannot sin. For what fellowship has light with darkness? Christ with Belial? Just as day and night cannot be mingled, so neither can justice and iniquity, sin and good works, Christ and antichrist. If we receive Christ into the lodging of our breast, immediately we put the devil to flight. If we sin and the devil enters through the door of sin, immediately Christ withdraws. Hence David also says after sin, 'Restore to me the joy of your salvation,' namely, that which he had lost by sinning. 'One who says that one knows God and does not keep his commandments is a liar, and the truth is not in that person.' Christ is called Truth—indeed, he is Truth: 'I am,' he says, 'the way and the truth and the life.' In vain do we applaud ourselves in him whose commandments we do not perform. 'To one knowing good and not doing it, it is sin. For just as the body without the spirit is dead, so also faith without works is dead.' Nor should we think it a great thing that we know the one God, since even the demons believe and tremble. 'One who says that one remains in him ought oneself also to walk just as he walked.'

PART IV. § 1. Let the adversary choose whichever of two alternatives he wishes; we give him the choice. Does he remain in Christ, or does he not remain? If he remains, then let him walk as Christ did. But if it is rash to promise the likeness of the Lord's virtues, he does not remain in Christ, because he does not walk as Christ did. He committed no sin, nor was deceit found in his mouth; when he was cursed, he did not curse in return, and like a lamb before its shearer, so he did not open his mouth. To him the prince of this world came and found nothing in him. Although he had committed no sin, God made him sin for us. But according to the letter of James, we all sin in many things; and no one is clean from sins, not even an infant if that person's life has been only one day. For who will glory that one possesses a chaste heart? Or who will trust that one is clean from sins? And we are held guilty in the likeness of Adam's transgression. Hence David also says, 'Behold, I was conceived in iniquities, and in offenses my mother bore me.' And blessed Job says, 'If I am just, my mouth will speak impious things; and if without crime, I shall be found depraved; and if purified in snow and washed with clean hands, you have sufficiently stained me with filth, and my garment has become execrable.' But lest we despair utterly, judging that we cannot be saved after the sins committed after baptism, he immediately tempers this very thing: 'And if anyone sins, we have an advocate with the Father, Jesus Christ the just, and he is the propitiation for our sins—not for ours alone, but also for those of the whole world.' He speaks this to believers after baptism and promises the Lord as advocate for their offenses. Nor does he say, 'If you sin in any respect, you have an advocate with the Father, Jesus Christ, and he is the propitiation for your sins,' lest you say that they had obtained baptism without full faith; rather, he says, 'We have an advocate with the Father, Jesus Christ, and he is the propitiation for our sins,' and not only for the sins of John and the others, but also 'for those of the whole world.' But in the whole world are both the Apostles and all believers.

From these things it is clearly proved that one can sin after baptism. For in vain do we have Jesus Christ as advocate with the Father if it is not possible to sin. The apostle Peter, to whom it had been said, 'One who is washed has no need to wash again,' and, 'You are Peter, and upon this rock I shall build my church,' denies after being terrified by a maidservant. And the Lord himself says, 'Simon, behold, Satan has sought you so that he might sift you like wheat; but I have prayed for you, that your faith may not fail.'"

And below: § 2. "If we do not sin after baptism, why do we ask that sins be remitted to us which were already remitted in baptism? It is another matter if this prayer, 'Forgive us our debts as we also forgive our debtors,' pertains to catechumens and does not befit the faithful and Christians. Paul, a vessel of election, chastises his body and reduces it to servitude, lest, while preaching to others, he himself be found reprobate.

§ 3. Writing also to the Hebrews, he says: 'For it is impossible for those who were once enlightened and tasted the heavenly gift and were made participants in the Holy Spirit, who likewise tasted the good word of God and the powers of the age to come, and have fallen away, to be renewed again to penance, since they crucify again for themselves the Son of God and hold him up to display.' Certainly we cannot deny that those who were enlightened and tasted the heavenly gift, were made participants in the Holy Spirit, and tasted the good word of God were baptized. But if the baptized cannot sin, how does the Apostle now say, 'And they have fallen away'? Yet, lest Montanus and Novatus return from this passage, who contend that those who have crucified for themselves the Son of God and held him up to display cannot be renewed through penance, he subsequently resolves this error and says, 'But we trust concerning you, most beloved, better things and things nearer to salvation, even if we speak thus. The Lord is not unjust, so as to forget your work and the love that you showed in his name, you who ministered to the saints and now minister.' And it would truly be great injustice in God if he punished only sins and did not receive good works. The Apostle says: I have spoken thus so that I might draw you back from sins and make you more cautious through fear of despair. Nevertheless, I trust concerning you, most dear, better things and things nearer to salvation. For neither does it belong to God's justice that he forget the good works and ministry that you have shown and show to the saints on account of his name, and remember only sins."

And a little later: § 4. "God created us with free choice, and we are drawn by necessity neither to virtue nor to vices; otherwise, where there is necessity there is no crown. Just as in good works God is the perfecter—for it is not of the one willing nor of the one running, but of God who has mercy and helps, so that we may be able to reach the finish—so in evils and sins the seeds and incitements are ours, and the perfection belongs to the devil. When he sees that we have built hay, wood, and stubble upon the foundation of Christ, then he sets fire beneath it. Let us build gold, silver, and precious stones, and he will not dare to tempt. Although even in this the possession is not certain and secure. For the lion sits in ambush to kill the innocent in secret; and the furnace tests the potter's vessels, but the temptation of tribulation tests just persons. And in another place it is written, 'Son, when you approach the service of God, prepare yourself for temptation.' Again the same James says, 'Be doers of the word and not hearers only. If anyone is a hearer of the word and not a doer, that person is like a man who considers the countenance of his birth in a mirror; he considered it, and immediately, withdrawing, forgot what sort of person he had been.' He admonished them in vain to join works to faith if they could not sin after baptism. 'One who,' he

says, 'has kept the whole law and sins in one thing has become guilty of all.' Who among us is without sin? God has enclosed all things under offense, so that he might have mercy on all. Peter also says, 'God knows how to rescue the pious from temptation.' And concerning false teachers: 'These are springs without water and mists driven by whirlwinds, for whom the gloom of darkness is reserved. For, speaking proud things of vanity, they entice in the desires of fleshly luxury those who had escaped for a little while and were turned back to error.' Does the apostolic discourse not seem to you to have depicted a new faction of ignorance? For they open, as it were, springs of knowledge that contain no water of doctrines; like prophetic clouds, they promise rain to which the truth of God may come, and they are driven by whirlwinds of demons and vices. They speak grand things, and their whole discourse is pride—for everyone who exalts one's heart is unclean before God—so that those who had taken refuge for a little while from sins return to their error; and they persuade them toward the luxury of foods and the delights of the flesh. For who would not willingly hear, 'Let us eat and drink, and we shall reign forever'? They call wise and prudent persons depraved, but they give a fuller hearing to those who are sweet in speech. The apostle John—or rather, the Savior writing in John—says to the angel of the church of Ephesus: 'I know,' he says, 'your works and labor and patience, and that you endured for my name and did not fail; but I have against you that you have abandoned your first charity. Remember from where you have fallen, and perform penance, and do the first works. Otherwise, I shall come to you and move your lampstand from its place unless you perform penance.' Similarly, he provokes the other churches—Smyrna, Pergamum, Thyatira, Sardis, Philadelphia, Laodicea—to penance, and threatens them unless they return to their former works; and in Sardis he says that he has a few who have not defiled their garments and will walk with him in white because they are worthy. But to whom does he write, 'Remember from where you have fallen,' and, 'Behold, the devil is about to send some of you into prison so that you may be tempted,' and, 'I know where you dwell, where the seat of Satan is,' and, 'Hold in mind how you received and heard,' and, 'Keep it and perform penance,' and the rest? Certainly he says it to one who believed and was baptized and, having once stood, fell through offense.

§ 5. I had for a little while deferred examples from the Old Testament, because whenever it speaks against them they are accustomed to say, 'The law and the prophets were until John.' Yet who does not know that under the deep dispensation of God all the saints of old were of the same merit as Christians now are? Just as Abraham then pleased in marriage, so now virgins please in perpetual chastity. He served the law and his time; let us too serve the law and our time, upon whom the ends of the ages have come. David, chosen according to the Lord's heart, who was to perform all his wills and who had said in a certain psalm, 'Judge me, O Lord, because I have entered in my innocence, and, hoping in the Lord, I shall not be weakened. Prove me, O Lord, and tempt me; burn my reins and my heart,' afterward, tempted by the devil and penitent after sin, says, 'Have mercy on me, O God, according to your great mercy.' A great sin wishes to be blotted out by great mercy. Solomon, beloved by the Lord and to whom God had been revealed twice, departed from the love of God because he was a lover of women. The Book of Days relates that Manasseh, a most impious king, was restored to his former dignity after the Babylonian captivity. And Josiah, a holy man, was pierced by the Egyptian king on the plain of Megiddo. Joshua also, the son of Josedech, the high priest, although in type he preceded the Savior, who bore our sins and joined to himself the church as a foreign woman from among the nations, nevertheless according to the letter is introduced as defiled after the priesthood, and the devil stands at his right hand, and afterward white garments are restored to him. It is

superfluous to write concerning Moses and Aaron, that they offended God at the water of contradiction and did not enter the promised land, since blessed Job recalls that even angels and every creature can sin, saying, 'For what? Is a human being clean before God? Or is a man without stain from his works? If he does not trust his servants and has found something depraved in his angels, how much more those dwelling in houses of clay, of which we also are from the same clay? The life of a human being upon earth is temptation.' And Lucifer fell, who sent to all the nations; and the one who was nourished among twelve stones in the paradise of delights, wounded from the mountain of the Lord, descended to the lower regions. Hence also the Savior says in the Gospel, 'I saw Satan falling like lightning from heaven.' If that highest sublimity fell, who could not fall? If there are ruins in heaven, how much more on earth. And nevertheless, although Lucifer fell—indeed, after his fall, the ancient serpent—his strength is in his loins and his power over the navel of his belly. Great trees are overshadowed in him, and he sleeps beside the rush and reed and sedge. He is the king of all who are in the waters, where, namely, are pleasure and luxury and the propagation and irrigation of marriages."

And below: § 6. "We have passed to the second division, in which he denies that those who obtained baptism with whole faith can afterward sin; and we have taught that, excepting God, every creature is subject to fault—not because all have sinned, but because they can sin—and that the fall of like persons should be a fear to those standing."

GRATIAN. Accordingly, it appears evidently from the foregoing that some possess charity, which they afterward lose by transgressing criminally. But if anyone contends that this is to be understood not concerning virtue but concerning the work of virtue, let that person consider what one should reply concerning the innocence of Adam, the justice of David, Moses, and the others who approached baptism with full faith. Although they were afterward to fall, nevertheless they taste the heavenly gifts and become participants in the Holy Spirit, so that not only before human beings but also before God's eyes they are found reborn from water and the Holy Spirit. If they did not possess charity before God's eyes, they would be regenerated by water alone, not by the Spirit. For works or participation in the sacraments, unless they proceed from charity, furnish neither justice nor innocence before God. "For if," says the Apostle, "I shall possess all faith, so that I move mountains, and if I distribute all my possessions as food for the poor, and if I hand over my body so that I burn, but do not possess charity, it profits me nothing."

§ 1. But because it is conceded by some concerning those predestined to life that they lose charity and recover it after it is lost, it must also be considered concerning the reprobate whether they possess charity, after losing which they are afterward condemned. Concerning them Augustine writes thus in the Book on Correction and Grace, [c. 9]:

[C. XLI.]

"The Apostle, knowing that some love God and do not remain in that good to the end, immediately added, 'to those who according to purpose are called saints, etc.'"

In the same work, [c. 6]: § 1. "Will this person, still unwilling to be corrected, also be able to say, 'What have I done that I did not receive?' It is certain that the person received and by one's own fault lost what one had received. I can, one says, I can indeed, when you reprove me, say that I have now

fallen back from a good life into an evil one by my own will: What have I done that I did not receive? For I received the faith that works through love, but I did not receive perseverance in it to the end."

In the same work, [c. 9]: § 2. "Without doubt I wished them to remain in good; they certainly were in good, but they did not remain in it."

In the same work, [c. 13]: § 3. "For the sake of the usefulness of this secret, it must be believed that some of the children of perdition, without receiving the gift of persevering to the end, begin to live by the faith that works through love, and afterward fall," etc.

GRATIAN. There are many similar things concerning the reprobate, also from the Gospel: "The one who has persevered to the end, etc." In the same work: "Again this man began, etc."

[C. XLII.] Likewise in the same work, [c. 8].

"It is to be wondered why God gives to certain children of perdition faith working through love, but does not give perseverance in it."

GRATIAN. Likewise that saying of the Gospel: "Not the one who begins, but the one who has persevered to the end, this one will be saved."

[C. XLIII.] Likewise Gregory, [book VIII of the Moralia, c. 35].

"Many begin well who end life in evil."

GRATIAN. But one who never works from charity does not begin well. But if one does something from charity, it is also necessary that charity be in that person at some time.

PART V. § 1. But that saying of Gregory, "Those who can be seduced, never at any time to return, etc.," is to be understood not generally concerning all the reprobate, but specifically concerning hypocrites. This is given to be understood evidently from the words of the same author. For when he proposed the question why the merciful God permits these things to happen—that Leviathan, either now through cunning suggestions or through that condemned man whom he fills, subjects to himself either the rays of the sun, that is, all the learned and wise, or gold, that is, men shining with the brightness of holiness, laying them beneath himself like mud by defiling them with vices—he immediately added in the solution of the same question, saying:

[C. XLIV.]

"We quickly answer this: the gold that could be spread like mud by his depraved persuasions was never gold before God's eyes. For those who can be seduced, never at any time to return, seem to lose before human eyes the holiness that they had, but they never possessed it before God's eyes. For often a person is entangled in many secret sins and appears great in one particular virtue; this virtue itself also, becoming empty, fails, because, when it becomes known to human beings, without doubt it is praised, and their favor is greedily sought. Hence it comes to pass that this very virtue is not virtue before God's eyes, since the person conceals what displeases and discloses what pleases. What merits, therefore, can there be before God when the evils are hidden and the good things public? For very often, as we have said, pride lies hidden and chastity becomes known. And therefore chastity shown for a long time is lost near the end of life, because hidden pride is retained uncorrected to the end. Another devotes oneself to alms and distributes one's possessions, but nevertheless serves many

injustices, or perhaps exercises one's tongue in detractions; and it very often comes to pass that one who had been merciful blazes near the end of one's life with the goads of rapacity and cruelty. This is done by a very just judgment, so that the person loses even before human beings that by which one pleased human beings, since that person never took care to correct that by which one displeased God. Another applies oneself to patience but does not take care to avoid envying others and preserving malice in the heart; the person at some time becomes impatient because one long lay hidden in pain. Accordingly, these persons are gold in one respect and mud in another. And this gold is spread like mud when, as their hidden sins exact, even the virtue that had shone publicly is dissipated.

§ 1. But we believe it worthwhile if in these things we weigh more subtly the power of the heavenly order. For often almighty God tolerates their hidden evils for a long time and dispenses their manifest goods so that they may profit the uses of his elect. For some, by no means utterly abandoning the world, enter the narrow way without being destined to persevere, but by their example kindle those who are destined to persevere to seek the narrow way. Hence it very often happens that, by the very fact that they seem to live well, they live not for themselves but rather for the elect alone, since, though not destined to persevere, by their examples they provoke others who are destined to persevere toward the pursuits of living well. For we often see certain persons enter upon a way and hasten toward a proposed place; others, because they see them going, follow and seek the same place together with them. But it very often comes to pass that, when some entangling difficulty rushes in, those who were going before turn back behind them, and those who were following reach the place. Thus certainly are those who do not persevere and who enter the way of holiness. For this reason they begin the path of virtue without being destined to arrive: so that they may show those who are destined to arrive the way upon which they should walk. Even their fall serves with no small usefulness for the advancement of the elect, because, when the elect behold their fall, they tremble concerning their own state; and the ruin that condemns the former humbles the latter. For they learn to trust in the protection of heavenly aid when they behold many fall by their own strength. Therefore, when the reprobate seem to act well, they show, as it were, a level way to the elect following them. But when they fall into the collapse of wickedness, they show, as it were, to the elect proceeding behind them a pit of pride that must be avoided."

GRATIAN. But the fact that the reprobate are denied to eat the bread that descended from heaven or drink the living water is not to be understood so that they are believed altogether foreign to charity, but so that they are understood not to plant a root in charity. For it is one thing to eat or drink, and another to taste. Hence in the Gospel it is read concerning Christ: "And when he had tasted, he refused to drink." Therefore, one who plants a root in charity drinks the living water and eats the bread that descended from heaven; one tastes who shares it to some degree but afterward withdraws from it by transgressing. Concerning such persons the Apostle says, "It is impossible for those who were once enlightened and tasted the heavenly gift and after all these things have fallen away to be renewed again to penance."

§ 1. Hence also the devil is denied to have stood in truth, not to have been created in it. For he was established in truth; but when he presumed concerning himself by growing proud, he was made foreign to it. But how is he declared to have been created in truth if he is proved to have been created without love for his Creator? Or how is he asserted to have been established good by God if he received nothing of divine direction in his creation? How did he exist without vice before the

movement of pride if he did not love his Creator in any way? Or how is he said to have been created equal or more excellent than the others if, while some of them were established in the love of God, he was made empty of his love? But from where did this difference between the good and evil angels proceed? If from the Creator, God seems unjust, who inflicts punishment before sin or punishes what he infused by creating. But if not from the Creator, since it is not from propagation, it remains that the vice of pride proceeded into the angelic nature from the judgment of its own liberty. Therefore that nature was established good which by its own vice was changed from good into evil. But how could it have been good if it wholly lacked love? For neither was the angel made like us, whom weakness burdens until a determinate time of life, so that neither virtue nor any vice obtains a place in us. Therefore he received love in his creation, as did the others, concerning whom it is said, "The angelic powers that persisted in the love of God." He does not say, "that began to love God," but "that persisted in his love," which had begun to love from creation, so that the beginning of divine love is believed common to all, but perseverance is understood to belong only to those who merited to receive this in reward: that, having been confirmed, they could no longer fall and would know this most certainly concerning themselves. Hence it is well said in Moses that heaven was made first and then the firmament, because, namely, the angelic nature was first established equally subtle in the higher things, and afterward was wondrously confirmed in those persisting in love of their Creator.

§ 2. Hence also Gregory in the Moralia, repeatedly treating many things concerning the perfection of angelic creation, denies that the devil was filled with charity; he does not assert that he was wholly empty of it. If he had wholly lacked it, the things said concerning his excellence could never suitably be understood of him.

[C. XLV.]

"For blessed Gregory says, 'Behemoth is called the beginning of the ways of God because, certainly, when the Creator made all things, he established this one first and made him more eminent than the other angels. The prophet beholds the eminence of his primacy when he says, "The cedars were not higher than he in the paradise of God; the fir trees did not equal his summit; the plane trees were not equal to his foliage; no precious tree of the paradise of God was likened to him and to his beauty, because he made him beautiful with many dense branches." For what can be understood in the cedars, fir trees, and plane trees except those troops of heavenly powers of towering loftiness, planted in the greenness of eternal joy? Although they were established exalted, nevertheless they were neither preferred nor equaled to this one, who is said to have been made beautiful with many dense branches, because the degree to which he was set over the other legions rendered him more beautiful was as great as the multitude of angels placed beneath him adorned him. That tree in the paradise of God had as many dense branches, as it were, as it beheld legions of heavenly spirits placed beneath it. And therefore, sinning, he was condemned without pardon because he had been created great beyond comparison. Hence it is again said to him through the same prophet, "You, the seal of likeness, full of wisdom and perfect in beauty, were in the delights of the paradise of God." For, being about to speak many things concerning his greatness, in the first word he comprehended all. For what good did one who was the seal of God's likeness not possess? From the seal of a ring such a likeness is expressed as an image as is contained essentially in that same seal. And although the human being was created in God's likeness, nevertheless, as though attributing something greater to the angel, he does not say

that he was established in God's likeness, but that he was the very seal of God's likeness, so that, the subtler his nature is, the more fully God's likeness is believed to have been expressed in him.

§ 1. Hence, still intimating the power of his primacy, the same prophet adds, "Every precious stone was your covering: sardius, topaz, jasper, chrysolite, onyx, beryl, sapphire, carbuncle, and emerald." He named nine kinds of stones because there are certainly nine orders of angels. For when angels, archangels, thrones and dominions, virtues, principalities, powers, cherubim, and seraphim are recalled in an open narration through the sacred writings, it is shown how many distinctions there are among the heavenly citizens. Yet this Behemoth is described as having been covered with them, because he possessed as a garment for his ornament those whose brightness he surpassed and, by comparison with them, was brighter.

§ 2. Concerning his description he further adds, "Gold was the work of your beauty, and your perforations were prepared on the day when you were established." Gold was the work of his beauty because he shone with the brightness of wisdom, which he received when created good. But perforations are made in stones for this reason: that, bound with gold, they may be joined in the composition of the ornament, and that those whom the interposed gold binds by filling their perforations may by no means part from one another. Therefore the perforations of this stone were prepared on the day of its establishment, because he was created capable of charity. If he had wished to be filled with it, he could have adhered to the standing angels like stones set in the king's ornament. For if he had rendered himself penetrable to the gold of charity, joined to the holy angels in the ornament, as we have said, he would have remained a fixed royal stone. Therefore this stone had perforations, but through the vice of pride they were not filled with the gold of charity. For because stones are bound with gold so that they do not fall, this one therefore fell because, although perforated by the artisan's hand, he disdained to be bound by the bonds of love. But now the other stones, which had been perforated similarly here, are bound by charity, penetrating one another; and when this one fell, they merited this in the gift: that they would no longer be loosened from the royal ornament by falling.

§ 3. Still beholding the loftiness of his principality, the same prophet adds, "You were the extended and protecting cherub upon God's holy mountain, and you walked perfect in the midst of the fiery stones." For cherub is interpreted as fullness of knowledge, and therefore this one is called cherub because it is not doubted that he surpassed all in knowledge. He walked perfect in the midst of the fiery stones because, among the hearts of angels kindled by the fire of charity, he existed illustrious in the glory of his establishment. He well calls him extended and protecting. For whatever we protect while extended over it, we overshadow, because he is believed to have overshadowed the brightness of the others by comparison with his own brightness; he is found to have been extended and protecting. For he covered the others as though by overshadowing them, since he surpassed their greatness with greater excellence.

§ 4. Therefore what there is called beautiful with many branches, what there is called the seal of likeness, what there is called cherub, what there is called protecting—this is what here, by the Lord's voice, this Behemoth is called the beginning of the ways of God. Concerning him, therefore, he intimates such wondrous things, in which he once was and which he lost, so that he may show a human being what that person, if proud, will suffer for the fault of one's exaltation, since in striking he refused to spare the one whom in creating he exalted in the glory of such great brightness.

Therefore let an exalted human being consider what one merits on earth, if one preferred to angels is cast down in heaven.'"

PART VI. GRATIAN. But charity that is abandoned in adversity is declared to be feigned, that is, earthen and fragile, just as the faith from which charity proceeds is denied by the Apostle to be feigned, that is, fragile. Similarly, charity that can be abandoned in adversity is said never to have been true. For as Jerome writes against Jovinian, "Every creature is subject to fault, not because every creature has sinned, but because there is none that cannot sin." But, as Augustine says, to be able to sin is not to be able to do something; rather, it is not to be able to do something. Hence he alone is called omnipotent who cannot do this, because he can do all things in which ability is the ability to do something. Therefore, just as in comparison with him who knows no mutability every creature is called faulty because it is capable of mutability, according to that saying, "No living being will be justified in your sight," and, "The stars are not clean in his sight," so in comparison with that creature which does not receive change, every creature that is changed is proved not true but vain. Hence every human being is called a liar and made like vanity.

§ 1. Hence Ecclesiastes also says that all things beneath the sun—that is, those that receive the succession of times—are called not merely vanity, which inheres in every creature by reason of mutability, but also vanity of vanities by the variation of change that they receive. Thus, therefore, in comparison with divine charity no virtue is proved true; or in comparison with that charity which is not abandoned, that which is lost is said to be true; thus also charity that is abandoned is denied in its own manner to be true. But just as every creature is said in its own manner to be good and true, so also charity that is abandoned is shown in its own manner to be true; otherwise, if it were in no manner in that person, it would be abandoned by no one. For what in no manner truly exists can in no manner be abandoned. But if it is truly abandoned in some manner, it must also truly exist in some manner.

Distinction III

GRATIAN. PART I. We have written these things briefly concerning charity because of those who deny that penance can be repeated, asserting that, just as charity once possessed is never lost, so penance once truly celebrated is stained by no subsequent fault; but if a criminal fault at some time follows it, it was not true penance and did not obtain pardon from the Lord. They strive to prove this from the definition of penance itself and from many authorities. For, as Ambrose says in a certain Lenten sermon:

[C. I.]

"Penance is both to lament past evils and not to commit again things that must be lamented."

[C. II.] The same in Book II on One Penance, [c. 10].

"There are found those who think that penance is to be performed repeatedly, who indulge themselves wantonly in Christ. For if they truly performed penance in Christ, they would not think that it must afterward be repeated, because just as baptism is one, so penance is one. But we ought always to repent of past sin; yet this [concerns] lighter offenses. But I more easily find one who has rightly preserved innocence than one who has fittingly performed penance."

[C. III.] Likewise Augustine, [Book on Ecclesiastical Dogmas, c. 54].

"The satisfaction of penance is to cut away the causes of sins and not to grant entrance to their suggestions."

[C. IV.] The same in the Book on Penance, [c. 8].

"Penance is a certain vengeance of one grieving, punishing in oneself what one grieves to have committed."

And below, [c. 19]: § 1. "One must grieve continually over sin; the very force of the expression declares this. For to repent is to hold punishment, so that one may always punish within oneself by avenging what one committed by sinning. For punishment is properly called an injury that punishes and avenges what each person committed. The one holds punishment who always avenges what one grieves to have committed."

GRATIAN. Accordingly, penance is vengeance always punishing in oneself what one grieves to have committed.

[C. V.] In the same work, [c. 13].

"If the Apostle continually laments even sins remitted through baptism, what remains for us, placed upon the foundation of the Apostles, except to lament? What, except always to grieve in life? For where sorrow ends, penance also fails. But if penance ends, what remains of pardon? For let one rejoice and hope concerning grace for as long as one is sustained by penance. For the Lord says, 'Go, and now sin no more.' He did not say only, 'Do not sin,' but, 'Let not even the will to sin arise in you.' How will this be observed unless sorrow is continually guarded in penance? Hence let one always grieve and rejoice concerning sorrow; and if it happens, let one always grieve concerning the penance of sorrow. And let it not suffice that one grieves, but let one grieve from faith and grieve that one has not always grieved."

[C. VI.] Likewise Gregory for the summer season, [that is, homily XXXIV on the Gospels].

"We cannot perform penance worthily unless we also know the measure of that penance. For to perform penance is both to lament evils perpetrated and not to perpetrate things that must be lamented. For one who so deplores some things that one nevertheless commits others either does not yet know how to perform penance or dissembles. For what does it profit if someone laments sins of lust and nevertheless still pants after the fires of avarice?"

The same, [book IX, letter 39, to Theoctista]: § 1. "But if they say that penance of a short time ought to suffice against sin, so that it may again be permitted to return to sin, the sentence of the first shepherd rightly strikes them; he says, 'The dog returned to its vomit, and the washed sow to the wallowing place of mud.' For the power of penance against sin is great, but only if someone perseveres in that penance.

§ 2. Truly to perform penance is to lament things committed, but to avoid things that must again be lamented."

[C. VII.] The same, [tractate CXXIV on c. 21 of John].

"The punishment is more prolonged than the fault, lest the fault be thought small if the punishment also ended with it. And through this, either for the demonstration of deserved misery, or for the amendment of a changeable life, or for the exercise of necessary patience, punishment temporally holds the person whom the fault no longer holds guilty for everlasting condemnation.

§ 1. God's wrath is not like a human being's, that is, a disturbance of an agitated mind, but the tranquil establishment of a just punishment."

[C. VIII.] Likewise John Golden Mouth, [in the homily on penance].

"Perfect penance compels the sinner willingly to suffer all things." And below: "In that person's heart is contrition, in the mouth confession, in the deed complete humility. This is fruitful penance."

[C. IX.] Likewise Smaragdus, [in the exposition of the Rule of Saint Benedict, c. 4].

"That person performs penance worthily who so deplores past evils that one does not again commit future ones. For one who laments a sin and again admits a sin is like someone washing an unbaked brick: the more one washes it, the more mud one makes."

[C. X.] Likewise Augustine, [homily XLI].

"Penitents—if, nevertheless, you are penitents and not mockers—change your life, be reconciled to God, and you too will graze with a chain. With what chain, you ask? 'The things you bind on earth will be bound also in heaven.' You hear the binding and think that you can deceive God? You perform penance, bend your knees, and laugh; you mock God's patience? If you perform penance, repent; if you do not repent, you are not a penitent. Therefore, if you repent, why do you do what you did evilly? If you repent of having done it, do not do it; if you still do it, certainly you are not a penitent."

[C. XI.] Likewise Isidore, [book II] on the Highest Good, [c. 16].

"One who still does what one repents of is a mocker, not a penitent, and does not seem to petition God as a subject, but to mock him as a proud person. A penitent returning to sin is a dog returning to vomit. For many shed tears without ceasing and do not cease to sin. I perceive some receiving tears for penance yet not possessing the disposition of penance, because through inconstancy of mind they now shed tears at the remembrance of sin, but now, when habit revives, by repeating they commit the things that they had lamented. Isaiah says concerning sinners, 'Wash yourselves; be clean.' The one is washed and clean who both laments past things and does not again admit things that must be lamented. The one is washed and is not clean who laments the things done but does not abandon them, and after tears repeats the things that had been lamented."

[C. XII.] Likewise Augustine in the Book of Soliloquies.

"That penance which a subsequent fault defiles is empty. A wound inflicted again is healed more slowly; one who sins and mourns frequently scarcely merits pardon. Laments profit nothing if sins are repeated. It avails nothing to seek pardon from evils and to repeat the evils anew. Therefore persist in confession; be firmly confirmed in penance. Do not cease to hold the good life that you began; continually preserve the purpose of a good life."

[C. XIII.] Likewise Gregory in the Pastoral Rule, [part III, admonition 31].

"Let those who lament the things admitted but nevertheless do not abandon them know to consider carefully that by weeping they vainly cleanse what by living wickedly they defile, since they wash themselves with tears for this purpose: that, clean, they may return to filth."

[C. XIV.] Likewise.

"One who laments what was admitted but nevertheless does not abandon it subjects oneself to a graver punishment, because one despises the very pardon that one could have obtained by weeping."

[C. XV.] Likewise.

"'Wash yourselves; be clean.' For after washing, whoever does not preserve the innocence of life after tears neglects to be clean. Therefore, those who do not cease to weep for things committed but again commit things to be wept for are washed but are not clean."

[C. XVI.] Likewise.

"The one who cleanses oneself from sin by tears is indeed washed from [contact with] a dead body; but one touches a dead body after washing who repeats faults after tears."

[C. XVII.] Likewise in the Moralia, [book I, final chapter].

"Indeed, a good thing is done in vain if it is abandoned before the end of life, because one who fails before reaching the goals also runs swiftly in vain."

PART II. GRATIAN. But the words of the definition are referred not to different times but to the same time: namely, that during the time when the person laments the evils committed, one does not commit what it is still necessary for one to lament. This is given to be understood from the subsequent words of the same authority, when it is said: "For one who so deplores some things that one nevertheless commits others either does not yet know how to perform penance or dissembles." Hence Augustine in the Enchiridion, [c. 70]:

[C. XVIII.]

"Certainly care must be taken lest anyone think that those unspeakable crimes, such that those who perform them will not possess the kingdom of God, are to be perpetrated daily and redeemed daily by alms. For life is to be changed for the better, and God is to be propitiated through alms concerning past sins; he is not, as it were, to be purchased for this purpose: that it may always be permitted to commit them with impunity. For he gave no one license to sin, although in showing mercy he blots out sins already committed, if fitting satisfaction is not neglected."

[C. XIX.] Likewise.

"One who wishes to give alms in an ordered manner ought to begin with oneself and first give it to oneself. For the work of truest mercy is called alms, concerning which it is said, 'Have mercy on your soul by pleasing God.' For this purpose we are reborn: that we may please God."

[C. XX.] Likewise John Chrysostom.

"For daily, brief, and light sins, without which this life is not lived, the daily prayer of the faithful makes satisfaction. For it belongs to those who have now been reborn to such a Father from water and the Holy Spirit to say, 'Our Father, who are in heaven.' This prayer utterly blots out the least daily sins; it also blots out those from which the life of the faithful, even if conducted criminally but changed for the better by repenting, withdraws, provided that, just as it is truthfully said, 'Forgive us our debts,' because things to be forgiven are not lacking, so it is truthfully said, 'As we also forgive our debtors'; that is, let what is said be done, because to forgive altogether those seeking pardon is itself also alms."

[C. XXI.] Likewise Pope Pius, [letter I].

"It profits a person nothing to fast and pray and perform other works of religion unless the mind is recalled from iniquity."

PART III. GRATIAN. From the person of a penitent of this kind is also understood that saying of Smaragdus, "That person performs penance worthily, etc.," and that saying of Augustine, "Penitents, etc.," and that saying of Isidore, "One is a mocker and not a penitent," and that saying of Isaiah, "Wash yourselves; be clean." Likewise also that saying of the Soliloquies, "Penance is empty." Similarly also that saying of Gregory, "Those who lament the things admitted," and, "One is washed from a dead body." But that saying of Ambrose, "There are found, etc.," is understood to have been said not according to the general but according to the special custom of the church concerning solemn penance, which among some is not repeated after it has once been celebrated. Hence Augustine writes to Macedonius, [letter LIV]:

[C. XXII.]

"Although it was cautiously and salutarily provided that a place for that most humble penance be granted once in the church, lest a medicine made cheap be less useful to the sick—a medicine that is the more salutary, the less contemptible it is—nevertheless, who would dare to say to God, 'Why do you still spare again this person who, after the first penance, binds oneself again with the snares of iniquity?'"

PART IV. GRATIAN. By this authority that saying of Ambrose is both qualified and it is shown that pardon is given through the first penance to one who will sin again; otherwise God, who had not yet spared the person, would by no means spare that person again. "The satisfaction of penance" also, and, "Go, and now sin no more," have the same meaning as the definition. But what is said in the Book on Penance is to be understood concerning perfect penance. For just as one charity is beginning, another advancing, and another perfect, so one penance belongs to beginners, another to those advancing, and another to the perfect. But just as pardon of sins is given in baptism to charity, although not yet perfect, so that, although someone will afterward sin gravely, nevertheless that person is then understood to have been reborn not by water alone, as Jovinian handed down, but by water and the Spirit, as Jerome writes against him, so pardon is not denied to the penance of beginners. This penance can be called perfect according to one consideration, because it groans and grieves with the whole heart, although according to another consideration it can be called imperfect, because it will not endure to the end.

§ 1. According to the first manner of perfection is understood that saying of John Golden Mouth, "Perfect penance, etc." According to the second manner of perfection is understood that saying of Augustine, "Penance is vengeance always punishing in oneself what one grieves to have committed." But that saying, "If penance ends, nothing of pardon remains," can be understood in two ways. For if, according to the opinion of certain persons, remitted sins return, it is easy to understand that nothing of pardon remains, because the sins that were previously remitted are repeated again. For just as one who is manumitted from a just servitude into freedom is meanwhile truly free, although afterward recalled into servitude because of ingratitude, so also sins are truly remitted to the penitent, although because of ingratitude for pardon the person is afterward to be entangled in the same sins. But if remitted sins do not return, it is said that nothing of pardon remains because nothing remains to the person of the purity of life and hope of eternal beatitude that one obtained with pardon. For just as nothing of its beauty remains to silver that has been perfectly purified if it is defiled by subsequent rust—although it is stained not by the first filth but by the subsequent one—so nothing of pardon is said to remain to one expiated through penance when one is defiled nevertheless not by sins already blotted out, but by sins still to be expiated.

PART V. § 2. But that sins are remitted through penance not only once but very often is proved by the authority of many.

For Jerome says to Rusticus concerning penance:

[C. XXIII.]

"'Seven times the just person falls and rises again.' If one falls, how is one just? If just, how does one fall? But one who always rises again through penance does not lose the name of just. And sins are pardoned not only to one transgressing seven times, but seventy-seven times, if the person is converted to penance. 'The one to whom more is remitted loves more.'"

GRATIAN. David also obtained through penance pardon at once for adultery and killing. Concerning his penance Jerome says in the same book:

[C. XXIV.]

"The fiftieth psalm shows the whole penance of the sinner, when David entered to the wife of Uriah and, reproved by Nathan the prophet, replied, saying, 'I have sinned,' and immediately merited to hear, 'And the Lord has taken your sin away from you.' For he had joined killing to adultery and nevertheless, turned to tears, said, 'Have mercy on me, O God, according to your great mercy.' For a great sin needs great mercy. Hence he joins and says, 'Wash me greatly from my iniquity and cleanse me from my sin, because I know my iniquity, and my sin is always against me. Against you alone have I sinned'—for, being king, he feared no other—'and I have done evil before you, so that you may be justified in your words and prevail when you are judged.' For God enclosed all things under sin so that he might have mercy on all. And he advanced so far that one who had lately been a sinner and penitent passed into being a teacher: 'I shall teach the iniquitous your ways, and the impious will be converted to you.' For confession and beauty are before him, so that one who has confessed one's sins and said, 'My scars have become corrupted and putrefied,' may change the foulness of wounds into the beauty of health."

[C. XXV.] Likewise Ambrose in the Apology of David, [c. 2].

"That king, so great and powerful, did not permit the consciousness of the offense to remain with him even for a very small moment, but by prompt confession and immeasurable sorrow returned his sin to the Lord."

And below: § 1. "Finally, the sorrow of his innermost affection moves the Lord, so that Nathan said, 'Because you have repented, the Lord also has carried your sin away.' Accordingly, the swiftness of pardon declared that the king's penance was profound, since it carried away the offense of so great an error."

And below: § 2. "Holy persons who desire to complete the pious contest and run the course of salvation, if perchance they fall anywhere as human beings, more through the frailty of nature than through a lust for sinning, rise again more keenly to run, renewing greater contests through the goad of shame, so that the fall may be judged not only to have brought no impediment but even to have accumulated incentives of speed. Therefore, if the course of runners is not broken when some perchance have fallen, nor the contest of wrestlers, but their contests remain uninjured—and indeed very many have conquered with greater grace after one or another fall—how much more ought those who entered the struggle of piety not to be censured by the offense of one fall, since blessed is the one who was able to restore oneself after a fall?"

And below, [c. 4]: § 3. "That he sinned belongs to his condition; that he supplicated, to correction. The fall is common, but the confession exceptional. Accordingly, to have fallen into guilt belongs to nature; to have washed it away belongs to virtue."

And below, [c. 13]: § 4. "Sin is either pardoned, or blotted out, or covered. It is pardoned through grace, blotted out through the blood of the cross, covered through charity; similarly also iniquity, which is judged to be the disposition of an unjust mind, although John in his letter says that one who committed sin also committed iniquity. Sin is iniquity, because iniquity is in sin itself. Nevertheless, as it seems to us, sin is the work of iniquity, but iniquity is the worker of fault and offense. Therefore, it comes first that iniquity itself be blotted out, that the root and seedbed of sins be cut away. Accordingly, just as discipline entering the soul of a wise person takes away imprudence, and knowledge ignorance, so perfect virtue takes away iniquity, and the remission of sins blots out every sin."

[C. XXVI.] Likewise in the same work, [c. 7].

"But how wondrous is that, that he offered himself to the angel striking the people, saying, 'What has this flock done? Let your hand be against me and against the house of my father.' By this deed the one who might be judged unworthy of absolution was immediately judged worthy of sacrifice. Nor is it remarkable if by such an offering of himself on behalf of the people he obtained pardon for his sin, since Moses, by offering himself to the Lord for the people's error, washed away sins. Therefore, did he cover his sins or not? But who would deny this, since the prophet himself taught that iniquities are remitted, sins are covered, and they are not imputed by the Lord? 'I acknowledge my offense, and I have not covered my injustice. I said, I shall pronounce my injustice to the Lord, and you remitted the impiety of my heart.' If he said, 'I shall pronounce,' and merited pardon before he pronounced, how much more, when he pronounced concerning himself, saying, 'I acknowledge my iniquity, and my offense is always before me,' was every sin remitted to him? Although Nathan

the prophet replied specifically concerning this, 'And the Lord has carried away your sin.' Therefore he both merited remission of iniquity and covered his sins with charity and covered them with good works, and sin was not imputed to him, because in him there was no deceit of malice, but a fall of error. Finally, there was no heat of depravity but the shadow of a mystery; and nevertheless he confessed his offense, acknowledged his iniquity, saw the washing, both saw and believed; he loved much, so that he could cover any error with exceeding charity."

PART VI. GRATIAN. Behold: the multitude of the people laid low shows how gravely the one whose penance is commended here and to whom pardon is shown to have been given even through the prophet afterward transgressed. Ahab also, as Jerome writes against Jovinian, a most impious king, obtained by fasting and sackcloth that he might escape God's sentence and that the overthrow of his house might be deferred to his descendants. Concerning him the same Jerome writes to the same Rusticus, saying:

[C. XXVII.]

"Ahab, a most impious king, possessed Naboth's vineyard by blood; and when, together with Jezebel, joined to him not so much in marriage as in cruelty, he is corrected by Elijah's rebuke, the Lord says these things: 'You have killed and possessed,' and again, 'In the place where the dogs licked Naboth's blood, there they will lick your blood. And the dogs will eat Jezebel before the walls of Jezreel.' When Ahab had heard this, he tore his garments, placed sackcloth over his flesh, fasted, and slept in haircloth. And the word of the Lord came to Elijah, saying, 'Because Ahab has reverenced my face, I shall not bring evil in his days.' Ahab and Jezebel committed one crime; nevertheless, both the punishment of Ahab, converted to penance, is deferred to his descendants, and Jezebel, persevering in crime, is condemned by a present judgment."

[C. XXVIII.]

Likewise John Chrysostom on the restoration of the fallen, [letter V to the fallen Theodore]. "Such, believe me, such is God's piety toward human beings; such piety never spurns penance if it is offered to him sincerely and simply. Even if someone reaches the summit of evils and nevertheless afterward wishes to return to the way of virtue, he receives the person and willingly embraces that person; he does all things so as to recall the person to the former state. And what is still more excellent and eminent, even if someone has not been able to complete the whole order of making satisfaction, he nevertheless does not spurn the least penance, however brief a time it was performed. He receives even that penance and does not permit the reward of even a very small conversion to be lost. For Isaiah indicates this to me, where he says certain such things concerning the people of the Jews: 'Because of sin I troubled him a little and struck him, and turned my face away from him; and he was saddened and walked sorrowfully, and I healed him and consoled him.' But that impious king will also give us a more evident testimony. He sought the prey of his cupidity through his wife's wickedness, but, disturbed by the enormity of the crime itself, he repented and, clothed in sackcloth, wept for his deed. And he so provoked the Lord's mercy toward himself that it absolved him from all sins. For thus God says to Elijah, 'Have you seen how Ahab was pierced with compunction before my face? And because he wept in my sight, I shall not bring evils in his days.'"

[C. XXIX.] Likewise Gregory in homily X on Ezekiel, [at the end].

"Just as the iniquitous King Ahab, reproved by the prophet, when he heard the divine sentence against himself, became terrified and was seized by great sorrow, so that the Lord said to his prophet, 'Have you not seen Ahab humbled before me? Therefore, because he was humbled for my sake, I shall not bring evil in his days.' In these words of the Lord it must be weighed how the sorrow of bitterness pleases him in his elect, who fear to lose God, if penance thus pleased him even in a reprobate who feared to lose the present world; or how pleasing to him is voluntary affliction for faults in those who please him, if this pleased him for a time even in one who displeased him."

GRATIAN. The Ninevites also, whom the Lord commends in the Gospel, performed penance at Jonah's preaching and, obtaining indulgence from the Lord's mercy, merited to escape the destruction of the overthrow. But the text of the Book of Kings declares what sort of life Ahab lived after receiving pardon. Concerning him Ambrose also writes that his wife Jezebel, by whose judgment he was inflamed, turned his heart, made him execrable by excessive sacrileges, and revoked this disposition of his penance. But concerning the Ninevites Jerome writes at the beginning of Jonah:

[C. XXX.]

"As Herodotus says, Nineveh was overthrown by the king of the Medes while Josiah was reigning among the Hebrews. Hence it is clear that, when Jonah preached, it merited pardon through penance, but because it afterward returned to its vomit, it was overthrown by God's wrath."

[C. XXXI.] Likewise at the beginning of Nahum.

"The tradition of the Hebrews confirms that the prophet Nahum existed before the coming of the king of the Assyrians who transferred the people of Israel captive into his own regions. Indeed, at the end of this reading the same prophet is shown to announce the coming of the aforesaid king. But when the inhabitants of Nineveh, as Jonah preached the destruction of the city, performed penance for their sins and impiety so that they would not sustain the destruction announced by divine wrath, after receiving God's mercy they entangled themselves in graver crimes. For this reason the aforesaid prophet, filled with the Holy Spirit and announcing God's judgment, spoke thus: 'God is jealous and the Lord avenges.'"

PART VII. GRATIAN. Likewise, that pardon is frequently granted to one frequently repenting is testified by Augustine in the Book on Penance, writing against certain heretics who said that penance was useful only once to those sinning after baptism. Against them Augustine writes, saying:

[C. XXXII.]

"Still the faithless press their case, because they are wise beyond what is proper—not sober, but exceeding the measure. For they say: Even if penance avails those who sin once after baptism, nevertheless repeated penance will not profit those who sin frequently; otherwise remission would be an incitement to sin. For they say: Who would not always sin if one could always return? For they say that God is an inciter of evil if he always comes to the aid of penitents, and that sins even please him, since grace is always ready for them. But they err; indeed, it is very evident that sins displease the one who is always ready to destroy them. For if he loved them, he would not always destroy them in this way, but would preserve them and cherish them as his gifts. He always destroys the sins he finds, lest what he created be dissolved, lest what he loved be corrupted. These hypocrites take

occasion from the Lord's deeds. Whom did he enlighten twice? Whom did he cleanse from leprosy twice? Whom did he raise from the dead twice? Not Lazarus, whom he loved; not the widow's son, whom he pitied and restored to his mother. He is not read to have received the prodigal son twice, nor to have freed Abraham's daughter from a demon twice. He repeated the deed in no person, teaching, as they say, that a remedy is not given frequently by the Lord. He said to many, 'Go, and now sin no more, lest something worse happen to you,' promising punishment, not further pardon.

§ 1. But the fact that he enlightened many blind persons and at different times, and strengthened many weak persons, shows that in those different persons the same sins are frequently remitted, so that the leper whom he first healed he enlightened as a blind person at another time. For this reason he healed so many lame, blind, and withered persons: so that the frequent sinner may not despair. For this reason it is not written that anyone was healed more than once: so that each person may fear to be joined to sin. Still today we see in the church those frequently feverish, frequently weak, frequently captured by sufferings, frequently freed, so that it may appear that the work of the one showing mercy occurs as many times as the confession of the penitent occurs. For how would he frequently heal the body, which is more vile and more unlike him, and not as often free the soul, which is more worthy and redeemed? He calls himself a physician, suitable not for the healthy but for those who are ill. But what sort of physician is this who would not know how to cure a repeated evil? For it belongs to physicians to cure one sick a hundred times a hundred times. He would be less than the others if he did not know things possible to others. He is mindful of himself who promised, 'I do not desire the death of the sinner, but that the person be converted and live.' For what sinner does he exclude? He who promised indulgence to all declares it by other promises. 'Whoever confesses me before human beings'—everyone, however great and however frequent a sinner, of whatever order, even if that person were a priest—'I also shall confess that person.' For 'whoever invokes the name of the Lord'—that is, according to the fact that he is named Lord, namely, whoever invokes him over oneself by serving and not contradicting him, as perhaps one often did—'everyone'—that is, whoever that sinner may be—'will be saved.' For this promiser has satisfied every soul with good things, even those sitting in darkness and the shadow of death, excepting no soul.

§ 2. That disciple understood this master who wished to correct the Corinthians through his letters and, as he himself testifies, corrected them three times in writing. For it was necessary that, as often as he saw them fall, so often he should help them rise. For he was mindful of the one who had said, 'The sins of those whose sins you remit are remitted to them.' But we know that both the first Fathers and, in every age, the church of God always remit sins up to seventy-seven times—which means always. These persons attempt to take this power away from the church. For the church that confesses that it sins ought to believe thus. For they deny that truth is in those seduced persons who dare to boast that they are without sin. For we all offend in many things, nor can an infant of one day be without sin upon earth. Therefore one who ever denies indulgence to penitents must be cast out of the church. For that person does not inquire what the Apostle meant when he said, 'I am conscious of nothing in myself, but I am not justified in this.' Perceiving that sins are accustomed to befall even the just, he did not affirm that he was without sin, although he knew that he had been joined to Christ by the indissoluble bond of charity. For unless he knew that the just frequently come to pardon, how would he doubt that he sinned, when he knew that he possessed the Spirit of God and served him with the purest intention? For why would the Lord have washed Peter's feet and taught the church this same thing unless, because the offense is daily, it is fitting that remission also

be daily? Why would he have taught those praying to say, 'Forgive us our debts,' unless he himself persevered as merciful, who does not wish us to cease from this petition?"

[C. XXXIII.] Likewise Augustine to Macedonius.

[Letter LIV.] "But human iniquity sometimes advances so far that even after penance has been performed, after reconciliation to the altar, persons commit either similar or graver things. And nevertheless God causes his sun to rise even upon such persons and grants the most abundant gifts of life and health no less than he had granted before. And although that place of penance is not granted to them in the church, nevertheless God does not forget his patience toward them. If anyone from their number should say to us, 'Tell me whether it profits me at all toward the future life if in this life I have despised the allurements of most enticing pleasure; if by repenting I have tormented myself more vehemently than before; if I have groaned more pitiably; if I have wept more abundantly; if I have lived better; if I have supported the poor more generously; if I have blazed more ardently with charity, which covers a multitude of sins'—who among us is so foolish as to say to this person, 'These things will profit you nothing hereafter; go, at least enjoy the sweetness of this life'? May God avert so empty and sacrilegious a madness."

PART VIII. GRATIAN. Whether anyone says that only the first penance after baptism is useful, not a subsequent one, or anyone contends that pardon is given only to the last penance, not to a preceding one, nevertheless the person is always opposed to the authority that repeatedly promises pardon to one repenting. But what is the true penance to which pardon is never denied, and what is the false penance to which indulgence is never promised, Adamantius and Hesychius testify upon Leviticus. Adamantius:

[C. XXXIV.]

"'Among these things, the goat that had been offered, etc.' Not to sin belongs to God alone; to amend belongs to the wise. But you will rarely find one who corrects oneself. Rare is confession of sin, rare is penance. Nature and shame resist, because all flesh is liable to fault, and each person is ashamed to confess sin while considering present things more than future ones. Moses wishes to find a soul empty of sin, so that it may lay aside the spoils of error and, naked of fault, depart without shame for itself. But an irrational impulse forestalls it, and the flame of a most rapid movement consumes the soul and burns up its innocence. For present things outweigh future ones, pleasant things serious ones, joyful things sorrowful ones, and things most hasty those that are slower. For iniquity is swift, because it supplies an occasion for doing harm; virtue is slow and delaying: before it begins, it judges what is becoming and what honorable; iniquity rushes all things headlong. Penance, therefore, is sluggish and ashamed, because it is weighed down by shame concerning present things. For it attends only to future things, whose hope is late and whose fruit slower.

"Meanwhile shamelessness runs ahead, and through hope of present things penance is shut out, and its disposition is burned up and abolished. The law seeks it and does not find it, for it has been burned up by the heat and smoke of iniquity. Hence it grows angry and says that penance ought to have been eaten in the Holy of Holies; it reproaches the priests as though they were negligent.

§ 1. "Aaron replies that priestly judgment ought to be provident and that this duty ought not readily to be entrusted to an unhealthy conscience, lest the later error become worse than the first. For

either oil or wine is easily corrupted in a fetid vessel. But how could sin be burned away where there was strange fire, and in the sight of the Lord, to whom all things lie open? It is as though one who keeps injustice shut within the heart and declares oneself to perform penance does not please God. Strange fire is lust, avarice, and every depraved cupidity. This fire burns up; it does not cleanse. For if those in whom it exists make an offering in the sight of the Lord, heavenly fire consumes them, just as it consumed Nadab and Abihu together with the things that had been offered for sin.

§ 2. "Therefore, one who wishes to be cleansed should remove the strange fire and offer oneself to that fire which burns away the fault, not the human being. This fire dried up the flowing blood of the woman with the hemorrhage; this fire dried up the fault of the thief. For it is a consuming fire; it heals those who confess simply and purely. Judas said, 'I have sinned by betraying just blood'; but he had a strange fire in his breast, by whose kindling he ran to the noose. He was unworthy of the remedy, because he did not repent with a pure mind. Therefore the priests do not take away the fault of one who deceitfully offers oneself, nor can they feast in that person, whose food is the remission of sins. Hence the true priest says, 'My food is that I do the will of my Father,' that is, that sinners who are converted and penitent may be saved. A sacrifice is not acceptable to God unless it is true and sincere."

[C. XXXV.] Likewise Hesychius, [book II, on Leviticus c. 10].

"'Among these things, the goat that is offered, etc.' Because every sin is destroyed through penance, and those who committed the aforesaid sin of foreign teaching and of blasphemy were not saved, the Lawgiver explains the cause of their death: 'Among these things, the goat that had been offered, etc.' For the sons of Aaron did not eat in the holy place what was for sin; that is, they did not cause penance for the sin committed to be performed in the church—those to whom this was commanded, whom Christ established as his vicars in the church. But he offered in the holy place, that is, in heaven, in the sight of the Father, the blood of his offering, which was offered for our blood. This sacrifice, however, ought to be eaten in the holy place, namely in the church, for the propitiation of sins. Hence he adds, 'as it was commanded to me': thus I commanded. Moses, therefore, bears the person of Christ. He found it burned up because they had sinned against the Holy Spirit; the offering for penance was taken away by the intelligible fire of the Holy Spirit. For those who sin voluntarily, no sacrifice for sin remains. For just as true penance merits pardon, so feigned penance provokes God, because the Holy Spirit of discipline will flee what is feigned. The holy Fathers, moreover, said that this is the unforgivable sin and blasphemy against the Holy Spirit: to persevere in crimes until the end of life and to distrust the power and mercy of God and of the Redeemer."

[C. XXXVI.] Likewise John Chrysostom, [homily XXXI], on [c. 12 of] the Letter to the Hebrews.

"Judas repented, but badly; for he hanged himself with a noose. Esau also repented; rather, the latter did not repent. For the tears were not those of penance, but of a violent spirit and infernal indignation. This is disclosed by his works.

§ 1. "Therefore, let us not deny our sins, nor let shamelessness make us hard. Let us punish ourselves voluntarily, lest we pay penalties involuntarily. Cain heard from God, 'Where is your brother Abel?' and said, 'I do not know; am I my brother's keeper?' You see how he committed a still greater sin by this. Did not his father act similarly? For when he too heard, 'Adam, where are you?' he

said, 'I heard your voice, Lord, and was afraid because I am naked, and I hid myself.' It is a great thing for someone to acknowledge one's sins and perseveringly to retain their memory. No remedy for offenses is found to be such as the continual memory of them."

[C. XXXVII.] Likewise Ambrose in Book II on Penance, [c. 11].

"'On the willows,' he says, 'in its midst we hung up our instruments.' How shall we sing the Lord's song in a foreign land? For if the flesh resists the mind and is not subjected to the governance of the soul and the command of the mind, it is a foreign land, which is not subdued by the cultivator's exercise. It cannot bring forth the fruit of charity, penance, and peace. It is therefore better then to rest than to act; do not seek the works of penance, lest in penance itself there be done what afterward needs penance. If penance has once been usurped and not celebrated rightly, it neither obtains the fruit of the former penance nor permits the use of a later one. Certainly, even when the flesh resists, the mind ought to be intent upon God; and if works do not follow, let faith not depart; and if the enticements of the flesh or adverse powers attack, let the mind remain dedicated to God. For it is then most pressed when the flesh does not yield and there are those who bear down violently, seeking to take away every defense of the wretched soul. Hence there is that saying: 'Empty it, empty it down to its foundation.' Pitying it, David says, 'Wretched daughter of Babylon.' It is certainly a daughter of Babylon when it ceases to be a daughter of God; yet he invites a physician for it, saying, 'Blessed is he who will seize your little ones and dash them against the rock'; that is, let one who has weak and slippery thoughts dash them against Christ, who diminishes all irrational movements by reverence for himself and by discretion."

[C. XXXVIII.] Likewise Jerome on Matthew, [at c. 27].

"It profited Judas nothing to have performed penance through which he could not correct his crime. If at any time a brother so sins against a brother that he is able to amend what he sinned, it can be divinely remitted to him; but if the works remain, penance is assumed by the voice in vain. This is what is said concerning him: 'And let his prayer become sin,' so that he was not only unable to amend the wickedness of the betrayal but added the crime of his own murder."

[C. XXXIX.] Likewise Pope Leo in the sermon "Among All."

"You proved more criminal than all and more unhappy, Judas; penance did not recall you to the Lord, but despair dragged you to the noose. Would that you had awaited the consummation of your crime and had delayed the hideous noose of death until Christ's blood was poured out for sinners."

PART IX. GRATIAN. By these authorities it is shown which penance is true and which false, and it is proved that no indulgence is given to false penance. In this is destroyed the opinion of those according to which it is asserted that one entangled in several offenses, through penance for one offense, obtains pardon of that offense from the Lord without penance for the other crime. They also endeavor to prove this by many authorities. The first of these is that saying of the prophet Nahum: "God will not judge twice for the same thing." But the one whom a priest judges, God judges, whose person the priest bears in the church. Therefore, one who is punished once by a priest for a sin will not again be judged by God for the same sin.

[C. XL.] Likewise Gregory on Ezekiel, [homily X].

"The Lord rained upon one city and did not rain upon another, and he rained upon one part of the same city and left another part dry. When one who hates a neighbor corrects oneself of other vices, one and the same city is rained upon in part and remains dry in part, because there are those who, while cutting away certain vices, gravely persist in others."

[C. XLI.] Likewise Ambrose in the eighteenth octonary, [on Psalm 118].

"The first consolation is that God does not forget to have mercy; the second is through punishment, where, even if faith is lacking, punishment makes satisfaction and brings relief."

GRATIAN. Likewise, an objection is raised from Jerome, who on Nahum seems to hold that, if an unbeliever were killed while committing adultery, he would not afterward be punished by God for the adultery. Likewise, if that was not satisfaction which he offered for homicide while living in adultery, when he has repented of the adultery, penance for both will have to be imposed upon him. This is proved alien to reason by ecclesiastical custom, which imposes penance twice upon no one for the same sin, unless it has been repeated.

§ 1. But that pardon for one sin is not granted to one who reserves another crime for oneself is proved not only by the foregoing authorities of Hesychius, Origen, Augustine, Smaragdus, Isidore, and Gregory, but also by another authority of the same Augustine in the Book on Penance. For he says:

[C. XLII.]

"There are many who repent of having sinned, but not altogether, reserving for themselves certain things in which they may delight, not observing that the Lord freed one who was at once mute and deaf from a demon. Through this he teaches that we are never healed except of all sins. For if he had wished sins to be reserved in part, he could have made perfect the one who had seven demons after six had been expelled. But he expelled seven, so as to teach that all crimes must be cast out together. And when casting the legion out of another, he left no one of them to possess the person who had been freed, showing that, even if the sins should be a thousand, it is necessary to repent of them all. For the Lord was praised because, when the demon had been cast out, the mute person spoke. He never healed anyone whom he did not free altogether. For he healed the whole human being on the sabbath, both the body from infirmity and the soul from every contagion, indicating that penitents ought to grieve at once for every crime arisen in soul and body. For I know the Lord to be an enemy of every criminal person. How, then, would one who reserves one crime receive pardon for another? Would that person obtain pardon without love of God, without which no one has ever found grace? For that person is an enemy of God while persevering in offense. For it is a certain impiety of unbelief to hope for half a pardon from him who is just and is justice. Would one thus find grace without true penance? For true penance strives to lead the one confessing to the purity of baptism. It is right that one who repents should wash away whatever filth one contracted after purification, at least with the tears of the mind. But one whose bodily eyes cannot disclose the sorrow of the mind is sufficiently hard; and let one know oneself culpably hard who bewails temporal losses or the death of a friend and does not show sorrow for sin in tears. Therefore, no one who has at any time shown sorrow for temporal things with tears may excuse oneself by saying that one does not have a fountain of tears. Therefore, let one who repents repent altogether, etc."

PART X. GRATIAN. That authority of the prophet Nahum, "God will not judge twice, etc.," does not show that all things punished temporally are not afterward to be punished by God. For although Jerome, on the same passage, says that the Sodomites, the Egyptians, and the Israelites in the desert were punished temporally by God so that they would not be punished eternally, nevertheless this is not to be understood generally of everyone. Otherwise, it would be desirable for every criminal person to perish by divine action for one's sins, struck by a thunderbolt from heaven, submerged in waters, or wounded by serpents, so that a brief and momentary penalty might put an end to eternal torments. That saying of the Apostle would also be false which, writing in the Letter to the Hebrews concerning those laid low in the desert, says, "Because of their unbelief they did not enter the land of promise." There it is proved that, just as by the desert of their unbelief they lost that rest, so because of the same unbelief they in no way entered the true rest of eternal beatitude.

§ 1. Therefore, that saying of Jerome is understood only of those who performed penance amid the very scourges—penance which, although brief and momentary, God nevertheless did not reject. Likewise, that saying of the prophet, "God will not judge twice for the same thing," must be understood only of those whom present punishments change, against whom a double tribulation will not arise. But those who amid scourges become harder and worse, like Pharaoh, who, when scourged by the Lord, was made harder, join eternal punishments to present ones, so that temporal punishment is for them the beginning of eternal condemnation. Hence Augustine on the Song of Deuteronomy:

[C. XLIII.]

"'A fire has been kindled, etc.' That is, vengeance will begin here and will burn unto the final condemnation."

GRATIAN. This must be noted against those who say that "God will not judge twice for the same thing" pertains to all scourges, because some are amended or judged here by scourges, while others are punished both here and eternally, such as Antiochus and Herod.

§ 1. But what Jerome seems to hold on the same passage concerning an unbelieving adulterer is proved false from his own words. For, by the example of the one who had cursed the Israelites and the one who had gathered wood on the sabbath, he shows that small sins are purged by brief and temporal punishments, but great sins are reserved for lasting and eternal punishments. For he says, [on the first chapter of Nahum]:

[C. XLIV.]

"Someone may ask here: if a member of the faithful, caught in adultery, is beheaded, what happens to him afterward? For either he will be punished, and what is said—'God will not judge twice for the same thing in tribulation'—is false; or he will not be punished, and it is desirable for adulterers that they be punished for the present by a brief penalty, so that they may frustrate eternal torments. To this we reply that God knows the measures both of all things and of punishments; that he is not forestalled by the sentence of a judge, nor is the power of afterward exacting punishment for sins taken away from him; and that a great sin is expiated by great and lasting torments. But if someone has been punished, like the one in the law who had cursed an Israelite and the one who had gathered

wood on the sabbath, such persons are not punished afterward, because a light fault has been compensated by a present punishment."

GRATIAN. That saying of Gregory, "The Lord rained upon one city, etc.," is to be referred not to pardon of the crime but to detestation of it, so that a part of the city is said to have been rained upon because one begins to detest the crime that one had loved, not because one obtains pardon for it. The detestation of a crime is called rain because it is instilled into our heart from the fountain of divine grace, so that each person may at least thereby arrive at true penance, or be punished less by God because, by a more lasting delight in sin, one would have accumulated a greater punishment for oneself. But if the rain is referred to indulgence for the crime, it will seem to contradict the Gospel sentence.

For if, because of fraternal hatred, even those things that have been remitted are brought back for punishment, much more are those that have not been remitted proved to be reserved for vengeance.

§ 1. Likewise, if, according to Augustine, one who is master of one's own will cannot begin a new life unless one repents of the old life, how will one who has not laid aside the oldness of hatred arrive at indulgence belonging to newness? Therefore, as has been said, that rain is proved to pertain to detestation of the crime, not to indulgence for it.

§ 2. Likewise, that saying of Ambrose, "Even if faith is lacking, punishment makes satisfaction," is not understood of that faith concerning which it is said, "Faith without works is dead," but of that of which the Apostle says, "Everything that is not from faith"—that is, everything done against conscience—"is sin." Faith, therefore, is lacking when there is no consciousness of sin beneath it. But because no one understands all one's offenses, sometimes there is in a human being a sin of which one has no consciousness. Hence the Apostle says, "I am conscious of nothing in myself, but I am not justified in this." Therefore, for a sin of which consciousness is lacking, its punishment, if patiently borne, makes satisfaction and relieves the person burdened.

But the argument raised at the end—"If that was satisfaction, it obtained pardon; but if it did not obtain pardon, it was not satisfaction; and if it was not satisfaction, a punishment must still be imposed upon him"—does not follow. For it is satisfaction when the cause of that sin is cut off and access is not granted to its suggestions; but its fruit is not received, because it is impeded by the sin that has not yet been abandoned. It will, however, be received when penance for that sin has followed, just as one who approaches the washing of regeneration deceitfully receives the sacrament but is nevertheless not reborn in Christ; but one is reborn by the power of the sacrament that one had received when that deceit has departed from one's heart through truthful penance. Hence Augustine also writes in the Book on Penance:

[C. XLV.]

"It is pious to believe, and our faith demands this, that, when Christ's grace has destroyed the former evils in a human being, it also rewards the good things, and, when it destroys what it did not find as its own, it loves and cherishes the good that it planted in the person while that person was sinning."

That saying of Jerome also seems to have been spoken according to this meaning, [at c. 1 of Haggai]:

[C. XLVI.]

"If at any time you see someone, amid many works of sin, doing some things that are just, God is not so unjust that, because of the many evil things, he forgets the few good things."

PART XI. GRATIAN. Although the remembrance of good things can be referred to present recompense, as Gregory writes in the homily on the rich man and Lazarus:

[C. XLVII.]

"We must beware lest, if perhaps we do some good thing, we receive its recompense in the present age, lest perhaps it be said to us, 'They have received their reward.' For unless that rich man had done some good thing for which he received recompense in the present age, Abraham would by no means have said to him, 'You received good things in your life.'"

[C. XLVIII.] Likewise John Chrysostom, [homily LXVII to the People of Antioch].

"Why, then, are we disturbed? Let no one be disturbed on seeing evil persons possess prosperity. Here there is no retribution for wickedness or for virtue; and if it sometimes happens that there is some retribution either for malice or for virtue, it is nevertheless not according to what is deserved, but merely as a certain foretaste of judgment, so that those who do not believe in the resurrection may be taught by such things. Accordingly, when we see an evil person become rich, let us not be overthrown; and when we see a good person suffer evils, let us not be disturbed. There are the crowns; there are the punishments. There is also another reason: an evil person cannot be evil in all things but has some good things, nor can a good person be good in all things but has some sins. Therefore, when an evil person has prosperity, it is to that evil person's own harm. For when one receives recompense here for those few good things, one will afterward be punished there more fully."

GRATIAN. The remembrance of good things can also be referred to receiving a milder punishment, so that good things done amid many evil things do not avail for obtaining the reward of the present or future life, but for undergoing a more tolerable punishment at the final judgment, as Augustine writes concerning faith and the other things that are possessed without charity in the Book on Patience, saying, [c. 26]:

[C. XLIX.]

"But if someone who does not have charity—which pertains to the unity of the spirit and the bond of peace by which the Catholic Church is gathered and joined together—being established in some schism, suffers tribulations, distresses, hunger, nakedness, persecution, dangers, prisons, chains, torments, the sword, flames, beasts, or the cross itself, lest one deny Christ, from fear of Gehenna and eternal fire, these things are in no way to be blamed. Indeed, patience is to be praised even here. For we shall not be able to say that it would have been better for that person to suffer none of those things by denying Christ than to suffer them by confessing him; rather, it must be judged that the judgment will perhaps be more tolerable for that person than if one had suffered none of those things by denying Christ. Thus the Apostle's saying, 'If I hand over my body so that I burn, but do not have charity, it profits me nothing,' is understood to profit nothing for obtaining the kingdom of heaven, not for undergoing a more tolerable punishment at the final judgment." And below, [c. 23]:

§ 1. "These things have been said because of charity, without which true penance cannot exist in us, because in good persons there is the charity of God, which endures all things."

PART XII. GRATIAN. Therefore, as appears from the foregoing, penance is useful to no one who perseveres in sin; nevertheless, it is to be denied to no one, because one will perceive its fruit when one has performed penance for the other crime. Thus, therefore, the definition of penance and the other authorities consonant with it deny that one who perseveres in crime performs penance—that is, penance useful and fruitful to oneself.

§ 2. That saying of Ambrose, "Penance once undertaken, and not truly celebrated, both takes away the fruit of the former and loses the use of the following," is understood of solemn penance. When solemn penance has not been truly celebrated, it both loses the fruit of the former—that is, of itself, which follows the preceding penance, because the person scorned the pardon that one could have obtained—and takes away the use of a following penance, according to the custom of certain churches among which the solemnity of penance is not repeated. Concerning this same penance that saying also is understood: "There is no second place for penance."

Distinction IV

GRATIAN. PART I. Since it has been shown above by the authorities of many that penance is truly celebrated and sins are truly remitted to one who will at some time fall back into crime, it is asked whether remitted sins return. The opinions of different persons on this question vary, some asserting and others, on the contrary, denying that remitted sins are afterward brought back for punishment.

§ 1. That sins once remitted return is proved by the authorities of many. The first of these is that saying of the prophet, "Let the iniquity of his fathers return into memory, etc."; the second is that saying of the Gospel, "Wicked servant, I forgave you the entire debt, etc." Then Augustine says in the Book of Psalms, [on Psalm 108]:

[C. I.]

"If Judas had retained that to which he was called, neither his own past iniquity nor that of his parents would in any way have pertained to him. Therefore, because he did not retain adoption in God's family but instead chose the iniquity of his old stock, the iniquity of his fathers returned into the Lord's sight, so that it too might be punished in him."

Likewise Rabanus: § 1. "'He handed him over to the torturers, etc.' It must be considered that he says 'the entire debt,' because not only the sins that a human being committed after baptism will be imputed to one for punishment, but also the original sins that were remitted to one in baptism."

[C. II.] Likewise Gregory, [Dialogues, book IV, c. 60].

"It is established from the Gospel sayings that, if we do not forgive from the heart what is committed against us, that is again exacted which we were rejoicing had already been remitted to us through penance."

[C. III.] Likewise Augustine in homily L.

"The Lord says, 'Forgive, and it will be forgiven you.' But I forgave first; do you forgive even afterward. For if you do not forgive, I shall recall you, and whatever I had forgiven I shall bring back upon you."

[C. IV.] Likewise.

"One who, forgetful of the divine benefit, wishes to avenge one's own injuries will not only fail to merit pardon for future sins, but even the past sins that one believed had already been remitted will be brought back upon that person for vengeance."

[C. V.] Likewise Bede on Luke, [book IV, c. 48].

"'I shall return to my house.' This verse is to be feared, not expounded, lest the fault that we believed extinguished in us overwhelm us while we are unoccupied through negligence."

[C. VI.] Likewise.

"For whatever heretical depravity or worldly cupidity seizes a person after baptism will soon cast that person down into the depths of all vices."

[C. VII.] Likewise Augustine in the Book of Questions on Deuteronomy, [question XLII].

"The sin that is drawn from Adam is repaid temporally, because all die on account of it; but it is not repaid eternally in those who have been regenerated through grace, if they remain in it until the end."

PART II. GRATIAN. But among those who follow this opinion, some say that sins that will return are remitted according to justice, but not according to foreknowledge. Thus the names of the disciples who went backward were written in the book of life on account of the justice which they served, but not according to the foreknowledge that did not hold them among the number of those to be saved. Thus a thousand are said to be about to fall at God's side and ten thousand at his right hand, although divine foreknowledge had never numbered them among his own. Hence the Lord also says to Moses, "If anyone sins before me, I shall erase that person from the book of life," so that according to the justice of the judge, one who according to foreknowledge had never been inscribed is said to be erased by sinning.

§ 1. Hence Augustine on the Letter to the Corinthians says: "But God was not well pleased with many of them," even if he was with some. All the sacraments were common, but grace was not common; so also now baptism is common, but the power of baptism is not.

PART III. § 2. But this is understood of those who approach deceitfully or of those who are baptized outside the church, who indeed receive the integrity of the sacrament but by no means attain its power. Sins are altogether remitted, however, to little children or adults approaching with full faith, even if they are at some time to depart from good and finish life in evil. Hence Augustine in the Book on Correction and Grace, [cc. 8 and 9]:

[C. VIII.]

"If those who fall away from good into evil die with a good will, let them answer, if they can, why God, when those persons were living faithfully and piously, did not then snatch them from the dangers of this life, lest malice change their understanding and lest deception beguile their souls. Did he not have this within his power, or did he not know their future evils? Certainly, neither of these things is said except most perversely and most insanely. Why, then, did he not do it? Let those answer who ridicule us when, in matters of this kind, we exclaim: 'How inscrutable are his judgments, and how unsearchable his ways!' For God does not fail to give this to those to whom he wills, nor indeed does that Scripture lie which says concerning the seemingly untimely death of a just person, 'He was snatched away lest malice change his understanding and lest deception beguile his soul.' Why, therefore, does God give this so great a benefit to some and not give it to others—God with whom there is no iniquity or acceptance of persons, and in whose power it lies how long each person remains in this life, which is called a trial upon earth? Therefore, just as they are compelled to confess that it is a gift of God for a human being to end this life before being changed from good into evil, while they do not know why it is given to some and not given to others, so let them confess with us, according to the Scriptures—many testimonies from which I have already set forth—that perseverance in good is a gift of God; and let them deign to be ignorant with us, without murmuring against God, why it is given to some and not given to others.

§ 1. "Nor should it disturb us that God does not give this perseverance to some of his children. For far be it that it should be so if they were among those predestined and called according to purpose who are truly children of the promise. For these, when they live piously, are called children of God; but because they will live impiously and die in that same impiety, the foreknowledge of God does not call them children.

"For there are children of God who are not yet such for us but already are for God. Concerning them John the Evangelist says, 'Because Jesus was about to die for the nation, and not only for the nation, but also that he might gather into one the scattered children of God.' They were certainly to become such by believing through the preaching of the Gospel; and nevertheless, before that happened, they were already children of God, inscribed with unshaken stability in the memorial of their Father. And again there are certain persons who, because of grace received even temporally, are called children of God by us, but nevertheless are not God's children. Concerning these the same John says, 'They went out from us, but they were not of us; for if they had been of us, they would certainly have remained with us.' He does not say, 'They went out from us, but because they did not remain with us, they are now no longer of us'; rather, he says, 'They went out from us, but they were not of us.' That is: even when they appeared to be among us, they were not of us. And as though it were said to him, 'How do you show this?' he says, 'For if they had been of us, they would certainly have remained with us.' This is the voice of God's children: John speaks, established in a preeminent place among God's children.

"Therefore, when the children of God say concerning those who did not possess perseverance, 'They went out from us, but they were not of us,' and add, 'For if they had been of us, they would certainly have remained with us,' what else do they say except that they were not children of God even when they were in the profession and name of children—not because they feigned justice, but because they did not remain in it? For he does not say, 'For if they had been of us, they would certainly have

maintained true, not feigned, justice with us'; rather, he says, 'If they had been of us, they would certainly have remained with us.' Without doubt, he wished them to remain in good; they were, therefore, in good. But because they did not remain in it, that is, did not persevere to the end, he says that they were not of us even when they were with us. That is: they were not of the number of the children even when they were in the faith of the children, because those who are truly children are foreknown and predestined to be conformed to the image of God's Son and are called according to purpose so that they might be elect. For a son of the promise does not perish, but a son of perdition does. These persons, therefore, were among the multitude of those called, but they were not among the fewness of the elect.

"God, therefore, did not fail to give perseverance to his predestined children. For they would have it if they were in that number of the children; and what would they have that they had not received, according to the true apostolic sentence? And thereby such children would be those given to Christ the Son, as he himself says to the Father: 'That everything you have given me may not perish but may have eternal life.' Those, therefore, are understood to be given to Christ who have been ordained to eternal life. They are those predestined and called according to purpose, none of whom perishes; and thereby none of them, changed from good into evil, ends this life, because one has been both ordained and therefore given to Christ in such a way that one does not perish but has eternal life. And again, those whom we call his enemies, or the little children of his enemies, whichever of them he is to regenerate in such a way that they end this life in that faith which works through love, are, even before this occurs, his children in that predestination and have been given to Christ his Son, so that they may not perish but may have eternal life.

§ 2. "Finally, the Savior himself says, 'If you remain in my word, you are truly my disciples.' Are those to be counted among them concerning whom the Gospel speaks as follows? When the Lord had commended the eating of his flesh and the drinking of his blood, the Evangelist says: 'He said these things while teaching in the synagogue at Capernaum. Therefore, many of his disciples, on hearing, said: This saying is hard; who can hear it? But Jesus, knowing within himself that his disciples were murmuring about this, said to them: Does this scandalize you? What, then, if you shall see the Son of Man ascending where he was before? It is the Spirit who gives life; the flesh profits nothing. The words that I have spoken to you are spirit and life. But there are certain persons among you who do not believe. For Jesus knew from the beginning who were believers and who would betray him, and he said: For this reason I told you that no one comes to me unless it has been given to that person by my Father. From this time many of his disciples went backward and no longer walked with him.' Were not these persons also called disciples, as the Gospel speaks? And nevertheless, they were not truly disciples, because they did not remain in his word, according to what he says: 'If you remain in my word, you will truly be my disciples.' Therefore, because they did not possess perseverance, just as they were not truly disciples of Christ, so they were not truly children of God, even when they seemed to be and were so called.

"We therefore call persons elect, disciples of Christ, and children of God because those whom we see regenerated and living piously must be so called. But they are then truly what they are called if they remain in that on account of which they are so called. But if they do not possess perseverance—that is, if they do not remain in that which they began to be—they are not truly called what they are called

on account of, and they are not such. For before him they are not this, since what they will be is known to him—that is, evil persons from good ones."

PART IV. GRATIAN. The end of this authority agrees with the opinion of those who say that sins are remitted according to justice and not according to foreknowledge. Others, however, although they admit that sins return, nevertheless assert that sins are altogether remitted, whether through baptism or through penance; that one approaching the washing with full faith is reborn not only by water but also by the Holy Spirit; and that one who subsequently is going to sin, and thereafter repents, although at some time going to fall back, is nevertheless so perfectly expiated at the time of one's penance that, if one died then, one would find eternal salvation.

The beginning of the same authority agrees with their opinion. For when it proposes the question why God, while those foreknown for death were living faithfully and piously, did not then snatch them from the dangers of this life, lest malice change their understanding and deception beguile their souls—although Scripture says concerning the untimely death of a predestined person, "He was snatched away lest malice change his understanding and lest deception beguile his soul"—it evidently shows that they were such persons as would certainly have attained eternal life if they had been withdrawn from the dangers of this life by a fatal necessity. Therefore, so that the end may agree with the beginning and the authority may not seem to contradict itself, it must be defined what it is to be written in the book of life, or to be erased from it, according to justice, and what according to foreknowledge. To be written according to foreknowledge is to be foreordained to life, which was done from eternity. Hence the Apostle says in the Letter to the Ephesians, [c. 1]:

[C. IX.]

"Blessed be the God and Father of our Lord Jesus Christ, who has blessed us in Christ Jesus with every spiritual blessing in heavenly places, just as he chose us in him before the foundation of the world, that we might be holy and immaculate in his sight in charity; who predestined us unto adoption as children through Jesus Christ."

GRATIAN. Similarly, to be erased according to foreknowledge is to be foreknown for death, not for life, which also was done from eternity. Hence the Lord says in the Gospel, "One who believes in me has eternal life; but one who does not believe has already been judged." Hence Augustine also says:

[C. X.]

"'The Lord knows those who are his.' None of these is seduced. The judgment has not yet appeared, but it has already been made."

GRATIAN. Moreover, to be written according to justice is, with God as author, to perform those things by whose merit one is worthy of eternal salvation. God indicated this twofold manner of being written in the Gospel, saying to the disciples: "In my Father's house are many dwellings; if it were otherwise, I would have told you, because I go to prepare a place for you; and if I go and prepare a place for you, I come again and shall receive you to myself, so that where I am you also may be." By saying, "In my Father's house are many dwellings; if it were otherwise, I would have told you, because I go to prepare a place for you," he shows that those to whom he spoke were written in the book of life by predestination. By adding, "If I go and prepare a place for you, etc.," he shows that

they were still to be written by operation. Hence Augustine also says in his explanation of the same passage:

[C. XI.]

"'In my Father's house are many dwellings.' The house of God, the temple of God, and the kingdom of heaven are just human beings, among whom there are many differences, and these are the dwellings of that house. These have already been prepared in predestination, as the Apostle says, 'Who chose us before the foundation of the world'—by predestining, but preparing in operation. Hence: 'Those whom he predestined, these he also called.' According to this it is said, 'God made the things that are to be,' that is, those that he is going to make." And below:

§ 1. "'If it were otherwise' confirms that they exist, because, if they did not exist, he would have said, 'I shall go and prepare,' that is, predestine. But because they are there, it is not necessary to prepare any. But because they do not yet exist in operation, he adds, 'And if I go and prepare.' By going but not abandoning, he prepares, because he withdraws himself and lies hidden, so that there may be faith, which is not concerned with a thing seen, and from this comes the merit of faith.

§ 2. "From this faith the just person lives, and one's heart is cleansed while one sojourns, and in it that which is not yet possessed is desired. This is the preparation of the dwelling, because he so prepares us for himself and himself for us that he may remain in us and we in him, according as each person will participate in him more or less in accordance with the diversity of merits. And this is the multitude of dwellings."

GRATIAN. One is erased according to justice because, grace having been withdrawn, one is permitted to perform those things by which one merits eternal condemnation. Hence the prophet, speaking in the person of Christ, says, "Let them be erased from the book of the living"—that is, let grace be withdrawn from them, upon whose withdrawal they are cast headlong into the depth of vices and thereafter into eternal condemnation—"and let them not be written with the just"—that is, let grace not be added to them by which they may become worthy of eternal salvation.

Thus sins are remitted according to foreknowledge when grace is prepared from eternity by which the one called is justified and the one justified is at last eternally glorified. But sins are remitted according to justice when either baptism is received with full faith or penance is celebrated with the whole heart; and this remission itself also is not unfittingly said to occur according to foreknowledge.

§ 1. For, as is given to be understood from the foregoing authority of the Apostle, there are two foreordinations: one by which each person is foreordained here to receive justice and remission of sins; the other by which someone is predestined to obtain eternal life in the future. Their effects are present justification and future glorification, all of which are fittingly distinguished in the foregoing authority. For the first predestination, by which persons are foreordained to present justice, is designated when it is said, "Just as he chose us in him before the foundation of the world, etc." Its effect is added below: "In which he graced us in his beloved Son, etc." The second foreordination is shown there: "Who predestined us unto the adoption of children, etc." Its effect is placed first, when it is said, "Who blessed us with every blessing, etc."

§ 2. These two foreordinations and their effects are so related that the first and its effect precede by nature and are inferred according to the rule of consequence. For if someone is foreordained to life, it

is consequently inferred that one is predestined to justice; and if one attains eternal life, one has therefore attained justice. But the converse does not follow. Hence many are participants in the first foreordination and its effect to whom the second or its effect is proved in no way to pertain.

§ 3. According to this distinction that authority of John is to be understood: "They went out from us, but they were not of us. For if they had been of us, they would certainly have remained with us." "They went out from us," he says; that is, they withdrew from our fellowship, in which they were participants with us in the first foreordination and its effect. "But they were not of us"; that is, they had not entered with us into fellowship in the second foreordination and its effect. This can be seen from the fact that, if they had been of us—that is, if they had been participants with us in that foreordination—they would certainly have remained with us; that is, they would not have withdrawn from fellowship in the effect of that foreordination which they had contracted with us. For if each phrase were referred to the second foreordination, "they would have remained" would not fittingly be inferred; rather, they would certainly have begun to be with us. But if they were referred to the first, the proposition "if they had been of us, etc." would be false. For many become participants in present justice and holiness who nevertheless do not persevere in it. Hence the Lord says in the Gospel, "Not the one who has begun, but the one who has persevered to the end, this one will be saved."

[C. XII.]

If someone says that this fellowship is contracted by those to be condemned in name and profession alone, but not in the truth of the thing, one is refuted by the testimony of the same authority. For concerning those who are participants in the first, but not the second, foreordination, it says: "Nor should it disturb us that God does not give this perseverance to some of his children. For far be it that it should be so if they were among the predestined," and the other things contained above in the same authority.

For the sheep concerning whom the Lord says in the Gospel, "And I have other sheep that are not of this fold," and the children concerning whom John says, "that he might gather into one the children of God who were scattered," were sheep and children according to foreknowledge in such a way that, according to the quality of their present state, not merely in appearance but even before God's eyes, they were children of wrath and eternal perdition. Hence the Apostle does not say, "We seemed to be," but, "We too were by nature children of wrath." Nor does he say, "You will be accounted by human beings," but, "You were once darkness, but now you are light in the Lord." Writing about himself to Timothy, he also does not say, "I seemed to be," but, "I was a blasphemer, a persecutor, and insulting; but now I have obtained mercy." All those who are reborn in Christ and are redeemed from the devil by his blood are first born sinners from Adam and liable to diabolical servitude. Therefore, just as these, although they are going to be children of God, are nevertheless first children of the devil, so those of whom the discussion is being held, although by departing from justice they are going to be children of eternal perdition, nevertheless, while they live piously and faithfully, truly are children of God, just, and worthy of eternal beatitude. Hence the authority does not say, "when they seemed to live piously and faithfully," but "when they lived piously and faithfully." For those who were never truly good would not truly be changed from good into evil. Nor does the Lord say through Ezekiel, "If the just person turns away from the justice that one seemed to possess," but "from one's own justice," namely, that which one truly possesses.

§ 1. What follows in the same authority—"They were not in the number of the children when they were in the profession of children"—is to be understood thus: persons are called children of God in two ways. They are called children of God by participation in the eternal inheritance, as John says in the Gospel, "As many as believed in him, to them he gave the power to become children of God." And the Apostle says in the Letter to the Romans, "The expectation of creation awaits the revelation of the children of God." And below: "Creation itself will be freed from the servitude of corruption into the freedom of the glory of the children of God." And below: "We ourselves groan within ourselves, awaiting the adoption of the children of God." Hence Augustine also, expounding these same words of the Apostle, says: "For the present, only a creature, since the form of the children is not yet perfect." In this manner, therefore, none are children except participants in eternal beatitude.

§ 2. In the present life, persons are also called children in three ways: either by predestination alone, like those concerning whom John says, "that he might gather the children of God who were scattered, etc."; or by predestination and hope of eternal beatitude, like those to whom the Lord says, "Little children, I am with you yet a little while"; or by the merit of faith and present justice, but not by predestination to eternal glory, like those concerning whom the Lord says, "If his children abandon my law and do not walk in my judgments, etc." Therefore, those concerning whom the present discussion is held are children by the merit of faith and present justice, but they are not children of eternal adoption.

Those who admit that remitted sins return must therefore confess that they are remitted according to justice but not also according to foreknowledge, just as sins are imputed to those who will be saved according to justice unto eternal condemnation, but not according to foreknowledge; because to the former, who fall away from good into evil, every sin will be brought back for punishment, while to the latter, who persevere in good to the end, none will be imputed for punishment.

PART V. GRATIAN. But those who say that remitted sins do not return endeavor to affirm their opinion by the authority of Gregory and Prosper. For Gregory says in book XV of the Moralia, [c. 22]:

[C. XIII.]

"What is meant by what is said, 'Who repays iniquity to children and grandchildren'? We certainly draw original sin from our fathers, and unless we are saved through the grace of baptism, we also bear the fault of our parents, because we are one with them. He will repay the iniquity of the fathers in the children when the soul of the offspring is polluted by original sin because of the parent's fault. And again, he does not repay the iniquity of the fathers in the children, because, when we are freed from original fault through baptism, we no longer possess the faults of our parents but those that we ourselves commit."

Likewise in Prosper's Responses, [to the second Objection of the Gauls]:

[C. XIV.]

"One who withdraws from Christ and ends this life estranged from grace—where does that person go except into perdition? But one does not fall back into that which was remitted, nor will one be condemned in original sin; nevertheless, that person is afflicted by the death that was owed on account of the things remitted."

GRATIAN. The end of this authority seems to contradict its beginning. For to have remitted sins return, or to be condemned in original sin, is nothing other than to undergo, after the remission of the sin, the penalty owed to it. The defenders of this opinion resolve the authorities that are contrary to one another in this way: remitted sins are said to return because whoever, after receiving remission, returns to vomit will be punished all the more severely insofar as, having more greatly abused God's kindness, one proved ungrateful for the remission received for each sin.

PART VI. § 1. But the former opinion seems more favorable, because it is strengthened by more authorities and confirmed by more evident reason. For, as the Lord says through Ezekiel, [c. 18]:

[C. XV.]

"If the just person turns away from one's justice and commits iniquity according to all the abominations that an impious person is accustomed to commit, shall that person live? All the person's just deeds that one had done will not be remembered; one will die in one's sin, and the just deeds that one performed will not be in memory."

[C. XVI.] Likewise Gregory in his explanation of the same passage.

"This must especially be considered by us: when we commit evil things, we recall our past good things without cause, because in the perpetration of evils there ought to be no confidence in preceding good things."

[C. XVII.] The same, [in homily IV on Ezekiel c. 1].

"For from a perforated bag, what is put in from one place goes out through another, because undiscerning minds do not observe how the reward acquired from a good work is lost through an evil work."

[C. XVIII.] Likewise Peter in the Second Letter, [c. 2].

"If those who escape the defilements of the world through knowledge of our Lord and Savior Jesus Christ are again entangled in them and overcome, the later things have become worse for them than the former. For it would have been better for them not to know the way of justice than, after knowing it, to turn backward from the holy commandment handed down to them." Paul also, writing to the Hebrews, says, [c. 6]:

[C. XIX.]

"Leaving behind the discourse concerning the beginning of Christ, let us be borne onward to his perfection, not again laying the foundation of penance from dead works."

GRATIAN. By saying "dead works," he signifies the former good things that had been made dead through the subsequent sin, because by sinning these persons rendered their former good things void. Just as these are made void by sinning, so through penance they revive, and each begins to avail toward the merit of eternal beatitude—even those found mingled with sins. Hence Augustine says, "It is pious to believe, etc.," and Jerome, "God is not unjust, etc." The Apostle also, writing to the Hebrews, after briefly recalling their faith, love, and good works, shows that after penance they would receive from the Lord the reward for all these things which they had lost by sinning.

Moreover, the one who said through the prophet, "If the just person turns away from one's justice, etc.," himself promised through the same prophet, saying, "If the impious person performs penance for all the sins that one has committed, keeps all my precepts, and performs judgment and justice, that person shall live by life and shall not die. I shall not remember any of the iniquities that one committed; that person shall live in the justice that one performed." To the children of Israel who were to be taken captive by the Assyrians, the Lord also reproaches through Hosea the sin of their old idolatry, and shows that the sin which had been remitted to their fathers when Moses supplicated had revived in the children, saying:

[C. XX.]

"Woe to them, because they have withdrawn from me; they will be laid waste because they have transgressed against me. Yet I redeemed them, and they spoke lies against me; they did not cry out to me in their heart, but howled in their beds. They ruminated upon wheat and wine and withdrew from me. I instructed them and strengthened their arms, and they devised malice against me. They turned back so that they might be without a yoke; they became like a deceitful bow. Their princes will fall by the sword because of the fury of their tongue."

PART VII. GRATIAN. The divine discourse reproaches the children with the ancient sins of their parents and for that reason predicts that their princes will fall by the sword. But through the same prophet the Lord shows that he acts against himself, saying:

[C. XXI.]

"Lest perhaps they say in their hearts that I have remembered all their malice: now their inventions have surrounded them; they were made before my face."

[C. XXII.] Jerome, [on Hosea c. 7].

"When they are punished in this way, let them not think that I punish them for the old sins of their fathers, because now—that is, in the present—they are surrounded with punishment for their own malicious deeds which they have devised; and their evils, as they suppose, cannot lie hidden from me. Rather, the very inventions lie open before my face, which sees all things clearly."

[C. XXIII.] The same.

"Heretics cannot plead old sins against God when they add a new impiety to ancient works and are bound by their own sins; and although they think that they conceal themselves from God, they cannot avoid his eyes, because the Lord's countenance is upon those who do evil things."

[C. XXIV.] Likewise Gelasius.

"Divine clemency does not permit remitted sins afterward to return for vengeance."

GRATIAN. But by these authorities children, expiated from original sin, are taught that they are not punished because their fathers sinned; rather, their fathers' sins return upon them because they follow their fault. So also good things that die through sin will avail toward reward, not because they were done, but because they revive through penance. Of this kind is also that saying of Augustine in the Book of Psalms, "If Judas had retained adoption, etc." Thus also that saying of Gregory in the Moralia is understood: "What is meant by what is said, 'You repay the iniquity of the fathers, etc.'?"

For the parents' iniquity is repaid to those who are punished because they drew the bitterness of sin in its root. But it is said not to be repaid to those in whom the parent's sins do not revive through the desert of their own iniquity. Therefore, just as good things that die through sin revive through penance unto reward, so evil things that are destroyed through penance revive unto punishment. Hence the prophet, in the person of a penitent, laments, saying, "My scars have putrefied and become corrupted"—that is, the wounds healed through baptism. Hence also the same prophet, although he knew himself cleansed from original sin by faith and the sacrament of circumcision, nevertheless, understanding that it had revived through the adultery and homicide he had committed, not without cause confesses it among the other things and says, "Behold, for I was conceived in iniquities, etc."

Distinction V

GRATIAN. PART I. Augustine teaches in the Book on Penance what things it is necessary for a sinner to consider in penance, saying:

[C. I.]

"Let one consider the quality of the crime in place, in time, in perseverance, in the variety of the person, with what temptation one committed it, and in the manifold execution of the vice itself. For it is necessary that one who fornicates repent according to the eminence of one's status or office, or according to the condition of the prostitute, and according to the manner of one's deed and how one accomplished one's baseness: whether in a consecrated place, or with one to whom one owed the eminence of fidelity—as in the houses of lords and of many others—or at a time appointed for prayer, such as the festivals of the saints and times of fasting. Let one consider how long one persevered and lament that one sinned perseveringly, and how great an assault overcame one. There are those who not only are not overcome, but voluntarily offer themselves to sin; they do not await temptation, but anticipate pleasure. And let one discuss with oneself by how manifold an exercise of the vice one sinned pleasurably. All this variety must be confessed and lamented, so that, when one has recognized that the sin is great, one may quickly find God propitious.

§ 1. "In recognizing the increase of the sin, let one consider oneself: of what age, wisdom, and order one was, and the entire state of another who does not sin. Let one linger over each of these things and perceive the measure of the crime, purging with tears every quality of the vice.

§ 2. "Let one lament the virtue of which one was deprived in the meantime. For one must grieve and purge by grief not only the fact that one sinned, but also that one deprived oneself of virtue. For although one hopes to obtain pardon, one can nevertheless grieve because one did not merit that for which one trusts one will be rewarded.

§ 3. "Let one be distressed and grieve that, by now escaping punishment for past things, the wretched person does not expect glory from that time, all of which, because it is exceedingly brief, one ought to have spent contending to attain the reward.

§ 4. "Let one also lament because, by offending in one thing, one has been made guilty of all. For one who, full of virtues, did not altogether fear God proved ungrateful. Each sinner is more culpable in this insofar as one is more acceptable to God. For this reason Adam sinned more, because he abounded in every good. In another manner also, one who offends in one thing is guilty of all,

because every virtue suffers loss from one vice. For if someone falls into avarice, one destroys generosity and also diminishes chastity. For from love of money one would either violate chastity or at least love it less. For if there is still so much chastity in one on account of God that one does not wish to lose it, nevertheless one guards it at least with lesser joy and lesser affection where one sees that a loss of money proceeds from it. So also in the other virtues: even if they are not expelled, they are nevertheless diminished greatly or a little through the reception of one vice, or are made worse in intention. Hence every virtue must be lamented in the case of every crime, and indulgence must be sought concerning them all.

§ 5. "It is also necessary to observe and, by observing, to lament the soul of one's neighbor which the fornicator snatched away from God or confirmed in evil after it had been snatched away; and also that one proved an example of evil in the commission of one's crime, although it would have profited one more to have been for others a cause of conversion. Therefore, let one groan over the life of others corrupted in one's own, or preserved incorrupt, and over the benefit to one's neighbor that one would have given by a good example. Let one grieve over the sorrow that one brought upon good persons by sinning and over the joy that one did not furnish them. And let one consider not only what one did and how, but how unjustly, as we have said, one offended God by sinning. Let one fear that sentence of truth: 'You cannot serve two masters.' Therefore, let one fear lest, by persevering in one sin, one has lost through the excommunication of evil all the good things that one did, so that one who served the devil through crime has lost the virtues one offered to God. Nevertheless, it is pious to believe that, once the grace of God has been received—which destroys the former evils in that person—it also rewards the good things, so that, when it has destroyed what it did not find as its own, it loves and cherishes the good that it planted even in a sinner.

§ 6. "Grieving in all things, let one either abandon the world or at least those things that are not administered without an admixture of evil, such as commerce, military service, and other things harmful to those who employ them, such as the administrations of secular powers, unless one employs them by permission of obedience. Let one place oneself altogether in the power of the judge, in the judgment of the priest, reserving nothing of oneself for oneself, so that at his command one is prepared to do, for recovering the life of the soul, whatever one would do to avoid the death of the body; and this with desire, because one recovers life without end, like God. For one who is going to be immortal ought to do with joy what one who is going to die would do to defer death. Let one always supplicate God, certain of pardon, who, if doubtful, would ask an earthly power in every way and without weariness. Let one who committed unlawful things in the freedom of one's choice abstain from many lawful things.

"Let one always offer God the mind and contrition of heart, and then what one can from one's possession; then let one securely offer what one offers. 'For the Lord looked upon Abel and his gifts.' But Scripture says 'upon Abel' before 'upon his gifts.' For, accepting the mind that he knew to be humble and pure, he rewarded the gifts of that person's liberality. But he did not look upon Cain or his gifts. For he did not receive his gifts because he did not acknowledge his mind, which he had seen. Therefore, in the judgment of the heart the alms of the giver is to be considered; one must no longer consider how much, but with what mind and what affection one gives what one can. For the widow, generous with the two small coins that she possessed, put in more than all. Therefore, one

who wishes to redeem one's sins by an offering of temporal things should take care first to offer the mind.

§ 7. "Let one take care lest, led by shame, one divide one's confession within oneself, so as to wish to manifest different things to different priests. For some conceal from one priest certain things which they preserve to be manifested to another. This is to praise oneself, to tend toward hypocrisy, and always to lack the pardon at which one thinks to arrive whole by fragments.

§ 8. "Moreover, let one whom true penance delights be fearful; let one not approach the Lord's body before a good conscience strengthens one. But in this separation let one consider the dreadful judgment, where he will separate the impenitent into the fire by a greater and more terrible separation. Let one grieve that one does not yet dare to receive the saving food which one greatly desires. These are worthy fruits of penance, disentangling the captive soul and preserving it in liberty.

§ 9. "Moreover, let one who wishes to attain the perfect grace of remission restrain oneself from games and the spectacles of the world. For if Dinah had restrained herself and remained among her own, she would not have been corrupted by a foreign ravisher. Therefore, let the soul that has often, or even once, been seized and corrupted beware for itself and restrain itself all the more; taught by experience, let it fear what it did not know while a virgin. Let it choose one whom it may imitate; let it not follow one whom its own soul condemns. For one judges oneself who does not distance from oneself a person who lacks the fruits of penance. For one praises and loves those whom one knows to bear fruit worthily. Let one seek worthy fruits, even if they are not worthy fruits of penance. For the fruits of the virtues are worthy fruits, but they do not suffice for penitents. Penance demands weightier fruits, so that the church may thus be appeased and, appeased by sorrow and groans, may obtain life for the dead."

C. II. Let a penitent cast away the profits of commerce.

Likewise Pope Leo, [letter XC, otherwise XCII, to Bishop Rusticus, c. 9]. PART II. The quality of the profit either accuses or indicts the merchant, because gain can be both honorable and base. Nevertheless, it is more useful for a penitent to suffer losses than to be bound by the dangers of commerce, because it is difficult for sin not to intervene in commerce between buyer and seller.

C. III. After penance it is not permitted to return to secular military service.

The same, [in the same letter, c. 10]. It is altogether contrary to ecclesiastical rules to return to secular military service after performing penance, since the Apostle says, "No one serving as a soldier for God entangles oneself in secular affairs." Hence one who wishes to entangle oneself in worldly military service is not free from the snares of the devil.

C. IV. Those who return to secular military service after penance are to perform penance for ten years.

Likewise from the Council of Nicaea, [c. 11]. But if any, called by God's grace, first indeed showed their faith by laying aside the military belt, but afterward returned to their own vomit, so that they both gave money and sought again to enter military service, let these spend ten years among the penitents after the first three years during which they were among the hearers. But this is especially to be observed by everyone: that their disposition and the fruits of penance be attended to. For all

who with every fear, persevering tears, and good works demonstrate their conversion not by words alone but by deed and truth, when the time established for them has been completed and they have now begun to share in the prayers, it will be permitted to the bishop to consider something still more humane concerning them. But those who have regarded their fall with indifference and judge it sufficient for themselves that they entered the church shall complete the appointed times in every respect.

C. V. Those who return to secular affairs after penance are to be suspended from communion.

Likewise from the Council of Orléans, [I, c. 13]. Concerning those who, after undertaking penance, forget the religious obligation of their profession and relapse into secular affairs, it was resolved that they be both suspended from communion and separated from the meals of all Catholics. But if, after the prohibition, anyone presumes to eat with them, let that person also be deprived of communion.

C. VI. What false penance is.

Likewise Gregory, [VII, at the Roman Synod celebrated in 1078, c. 6]. PART III. We call those penances false which are not imposed according to the authority of the holy Fathers in proportion to the quality of the crimes. Therefore, if a soldier, merchant, or person devoted to any office that cannot be exercised without sin comes to penance entangled in graver faults—or one who unjustly retains another's goods, or bears hatred in the heart—let that person recognize that one cannot perform true penance through which one may be able to arrive at eternal life unless one abandons the business, leaves the office, dismisses hatred from the heart, restores the goods that one unjustly took away, lays down arms, and bears them no longer, except by the counsel of religious bishops for the defense of justice. Nevertheless, lest that person despair, meanwhile we exhort one to do whatever good one can, so that almighty God may illuminate that person's heart toward penance.

C. VII. After conversion it is not permitted to return to a business that cannot be conducted without sin.

Likewise Gregory in homily XXIV on the Gospels. A business that existed without sin before conversion was also not a fault to resume after conversion. For there are many businesses that can scarcely, or not at all, be carried on without sins. Therefore, the mind must not return after conversion to those things that entangle it in sin.

C. VIII. On the same matter.

Likewise Innocent II, [at the Roman Council, c. 22]. PART IV. We admonish our brothers and priests not to permit the souls of laypersons to be deceived by false penances and dragged into hell. It is established that penance is false when, after many sins have been spurned, penance is performed for only one, or when penance is so performed for one that there is no withdrawal from another. Hence it is written: "Whoever observes the whole law but offends in one thing has become guilty of all"—namely, with respect to eternal life; for just as if one were entangled in all sins, so, if one remains in only one, one will not enter the gate of eternal life. Penance is also false when the penitent does not withdraw from a curial or commercial office that cannot in any way be conducted without sins; or if one bears hatred in the heart; or if one does not make satisfaction to anyone one has offended; or if the offended person does not forgive the offender; or if anyone bears arms against justice.

Distinction VI

GRATIAN. PART I. To whom confession ought to be made, or what sort of person the one who judges the crimes of others ought to be, is taught from the same Book on Penance, [c. 10], when it is said:

[C. I.]

"One who wishes to confess sins so as to find grace should seek a priest who knows how to bind and loose, lest, when one has proved negligent concerning oneself, one be neglected by him who mercifully admonishes and seeks one, and lest both fall into the pit which the fool refused to avoid." And below: "Accordingly, the power of confession is so great that, if a priest is lacking, one should confess to one's neighbor. For it often happens that a penitent cannot be ashamed before a priest, since neither place nor time provides one to the person desiring him. And although the one to whom the person confesses does not have the power of loosing, nevertheless the one who confesses the baseness of the crime to a companion becomes worthy of pardon because of the desire for a priest. For the lepers were cleansed while they were going to show their faces to the priests, before they reached them. Hence it is clear that God looks to the heart when necessity prevents persons from reaching the priests. Indeed, often they seek them while healthy and joyful; while they seek, they die before they arrive. But God's mercy is everywhere, which knows how to spare even the just, although they would not be loosed so quickly as by a priest. Therefore, one who confesses altogether should confess to the better priest whom one can find. If the sin is hidden, let it suffice to bring it to the priest's knowledge, so that the offering of the gift may be pleasing." And below, [c. 12]:

§ 1. "Therefore, let the penitent labor to be in the church and tend toward the church's unity. For unless the church's unity comes to one's aid, unless it completes by its own operation what is lacking to the sinner, the soul of the dead person will not be rescued from the enemy's hands. For it must be believed—and the piety of faith demands that it be believed—that all the alms of the whole church, its prayers, and its works of justice and mercy come to the aid of one who acknowledges one's death unto conversion. Therefore, no one can worthily repent whom the church's unity does not sustain. Therefore, let one not seek priests divided from the church's unity through any fault.

"For Judas, who went as a penitent to the Pharisees, abandoning the Apostles, found no help except an increase of despair. For they said, 'What is that to us? See to it yourself.' If you have sinned, let it be yours; we do not come to your aid, we do not charitably take up your sins, we do not promise that they will be borne together, we do not teach you how to lay down the burden. For what have we to do with mercy, who do not even pursue the works of justice? He should have gone to the brothers; he should have gone to those who had prayed for Peter's mother-in-law when she had a fever, who had presented the importunate Canaanite woman to mercy. He should have asked Peter, who was pouring forth tears for himself. He should not have fled Mary and Martha, who had obtained life for Lazarus, nor the weeping crowd that had regained the widow's only son. He went to those divided, and divided he perished." And below, [c. 20]:

§ 2. "Therefore, the priest to whom every sinner is offered, before whom every infirmity is set, must be liable to judgment in none of those things which he is ready to judge in another. For one who judges another while oneself liable to judgment condemns oneself. Therefore, let one know oneself and purge in oneself what one sees others offer to one. Let one take care to have cast away from

oneself whatever one has found harmful in another; let one heed what is said: 'Let the one who is without sin be first to cast a stone at her.' For he freed the sinful woman because there was no one who could justly cast a stone. How would one stone her who knew oneself worthy of stoning? For no one was without sin, by which it is understood that all were guilty. For venial sins were always remitted through ceremonies. Therefore, if there was any sin in them, it was criminal.

"Accordingly, priests who do not first edify themselves are worse in this respect than those who were watching the Lord with snares. In this, therefore, the crime of priests is most manifest and detestable beyond measure: they do not first judge themselves, and they bind others. For they ought to fear the crime which those persons feared and perceived to be detestable—those who were so blind that they hoped to seize the highest Wisdom with their snares. What was manifest to them, what each then avoided, let the priest avoid, who in this error has proved worse than those Jews.

§ 3. "Let the spiritual judge take care that, just as one has not committed the crime of wickedness, so one not lack the gift of knowledge. It is necessary that one know how to recognize whatever one ought to judge. For judicial power demands that one discern what one ought to judge. Therefore, let the diligent examiner and subtle investigator question the sinner wisely and as though shrewdly concerning what one perhaps does not know or what the sinner through shame wishes to conceal. Once the crime has been ascertained, let one not hesitate to investigate its varieties, the place, the time, and the other things that we discussed above in expounding their quality. Once these are known, let one be benevolent, prepared to raise the sinner and to carry the burden together; let one possess sweetness in affection, compassion concerning another's crime, and discretion regarding its variety. Let one assist the person confessing by praying, giving alms, and doing the other good things for that person. Let one always help by soothing, consoling, promising hope, and, when necessary, even rebuking. Let one teach by speaking and instruct by acting. Let one who wishes to become a participant in joy be a participant in labor. Let one teach perseverance; let one take care not to fall, lest one justly lose judicial power.

"For although penance can acquire grace for that person, it nevertheless does not immediately restore one to the former power. For although Peter was restored after his fall, and the power of dignity has often been returned to fallen priests, it is nevertheless not necessary that it be conceded to everyone as though by authority. One authority is found that concedes and, as it were, commands it; another is found that by no means concedes it but forbids it. These scriptural authorities do not conflict but agree, if the time, place, and manner of penance introduce peace. For when there are so many who fall that they claim their former dignity by authority and make for themselves, as it were, a practice of sinning, this hope must be cut away. But if there is a place where these things do not concur, those who sin can be restored. Therefore, a just and discerning pontiff is not compelled always to cast away his priests or immediately to restore them, unless it has been established by the Roman Pontiff."

PART II. GRATIAN. Let a priest take care not to disclose the sins of penitents to others. But if one does so, let that person be deposed. Hence Gregory:

[C. II.] Let a priest who presumes to disclose the sins of a penitent be deposed.

Above all, let a priest take care not to tell anyone concerning those who confess their sins to him that the person confessed them—not to relatives, not to strangers, nor, which God forbid, because of any

scandal. For if he does this, let him be deposed and proceed as an ignominious wanderer all the days of his life.

PART III. GRATIAN. But what is said—that the penitent should choose a priest who knows how to bind and loose—seems contrary to what is found in the canons, namely, that no one should presume to judge the parishioner of another. But it is one thing to despise one's own priest from favor or hatred, which is prohibited by the sacred canons; it is another to avoid a blind person, which each person is admonished by this authority to do, lest, if the blind provides leadership to the blind, both fall into the pit. Hence Urban II:

C. III. Let another priest not receive for penance a person entrusted to any priest, except because of that priest's ignorance.

It was resolved that henceforth no priest may receive for penance anyone entrusted to another priest without the consent of the one to whom the person first entrusted oneself, except because of the ignorance of the one to whom the penitent first confessed. But one who attempts to act against these statutes will be subject to danger to one's rank.

Distinction VII

GRATIAN. PART I. The time for penance extends to the final moment of life. Hence Pope Leo, [letter XC, otherwise XCII, to Rusticus, c. 5]:

[C. I.]

"No one is to be despaired of while established in this body, because sometimes what is deferred through the distrustfulness of age is completed by more mature counsel."

PART II. GRATIAN. Although Augustine writes concerning those who defer penance, [in the Book of Fifty Homilies, homily 41]:

[C. II.]

"If anyone, placed in the final extremity of one's illness, wishes to receive penance, and receives it, and is immediately reconciled and departs from here, I confess to you: we do not deny that person what one seeks, but we do not presume that one departs well from here. Whether one departs safely from here, I do not know. We can give penance, but we cannot give assurance. Do I say, 'That person will be condemned'? But neither do I say, 'That person will be freed.' Do you therefore wish to be freed from doubt? Do you wish to escape what is uncertain? Perform penance while you are healthy. If you act thus, I tell you that you are secure, because you performed penance at a time when you were able to sin. But if you wish to perform penance when you can no longer sin, your sins have abandoned you; you have not abandoned them."

[C. III.] The same, [in the same homily, a little earlier].

"One who has truly performed penance and has been loosed from the bond by which one was bound and separated from Christ's body, and has lived well after penance as one ought to have lived before penance, whenever one dies after reconciliation, goes to God, goes to rest, will not be deprived of God's kingdom, and will be separated from the people of the devil."

[C. IV.]

"But if anyone, etc." And below: "One baptized at the final hour departs from here safely; a member of the faithful who lives well departs from here safely; one who performs penance and is reconciled while healthy and afterward lives well departs from here safely. Whether one who performs penance at the end and is reconciled departs from here safely, I am not certain. Where I am certain, I speak and give assurance; where I am not certain, I can give penance but cannot give assurance." And a little later:

§ 1. "'But how do you know,' one says, 'whether perhaps God will forgive me?' You speak truly: I know the former; I do not know the latter. For this reason I give you penance, because I do not know; for if I knew it profited you nothing, I would not give it to you. Likewise, if I knew it profited you, I would not admonish you or frighten you. There are two possibilities: either you are forgiven or you are not forgiven. Which of these will happen to you, I do not know. Therefore, hold to what is certain and abandon what is uncertain."

GRATIAN. Cyprian shows why Augustine said this, [book IV, letter 2 to Antonianus], saying:

[C. V.]

"For this reason, dearest brother, we have judged that those who do not perform penance and do not testify with their whole heart, in sorrow for their offenses, to a manifest profession of their lamentation must be altogether prohibited from hope of communion and peace if they begin to supplicate during illness and danger; because it is not repentance for the offense but the warning of pressing death that compels them to ask, and one who did not reflect that one would die is not worthy to receive consolation in death."

[C. VI.] Likewise Augustine in the Book on Penance, [cc. 17 and 18].

"Let no one wait until one cannot sin. For penance seeks freedom of choice, so that one may be able to destroy the things committed, not necessity. Therefore, one who is abandoned by one's sins before oneself abandoning them condemns them not freely but, as it were, by necessity. For although the thief merited pardon at the end for every crime, he nevertheless did not give baptized persons authority to sin and persevere. For the one who then first confessed Christ on the cross was then baptized. Indeed, if penance comes at the final gasp of life, it heals and frees in the washing of baptism in such a way that those baptized at the end do not experience even purgatory; rather, enriched with the goods of holy mother church, they are to receive manifold good in true beatitude.

"But those who, when they could, never wished to be converted, confessing when they can no longer sin, do not even thus easily obtain what they wish. For it is necessary that penance bear fruit, so that it may obtain life for the dead person. It is written that no one is saved without charity. Therefore, a human being does not live by fear alone. Accordingly, one who repents late must not only fear God as judge but love him as just; let one not only fear punishment but be distressed for glory. For one ought to grieve concerning the crime and all its aforesaid variety. Because this is scarcely possible, Augustine could doubt concerning that person's salvation.

§ 1. "I indeed believe him who said, 'In whatever hour the sinner groans and is converted, that person shall live by life.' He said that one converted, not merely turned, shall live. I consider one turned who grieves concerning the crime; one converted who grieves concerning all its variety that

we have explained. One is turned away from sin who now wishes to abandon sin; one is converted—that is, turned wholly and altogether—who now not only does not fear punishments but hastens to tend toward the good God. If this conversion happens to anyone even at the end, one must not despair of that person's remission. But because so just a conversion scarcely or rarely occurs, there must be fear concerning one who repents late. For one whom sickness presses and punishment terrifies will scarcely arrive at true satisfaction, especially when the children whom one loved unlawfully are present, and wife and world call one to themselves. Late penance is accustomed to deceive many.

"But because God is always powerful, he is always able, even in death, to help those whom he pleases. Therefore, since fruitful penance is a work not of a human being but of God, he can by his mercy inspire it whenever he wills and reward from mercy those whom he can condemn from justice. But because there are many things that impede and draw back the sick person, it is most dangerous and close to destruction to defer the remedy of penance until death. But the one in whom God then inspires true penance is great: that person awaits God's clemency, perceiving God's goodness to be greater than one's own wickedness.

§ 2. "But even if one has been converted in this way, we do not promise that one shall 'live by life and not die' in such a way as to escape every punishment. For one who deferred the fruit of conversion into another age must first be purged by the fire of purgation. Although this fire is not eternal, it is grievous in a wondrous manner. For it surpasses every punishment that anyone has ever suffered in this life. So great a punishment has never been found in the flesh, although the martyrs suffered wondrous torments and many persons have often wickedly endured very great punishments. Therefore, let each person strive so to correct one's offenses that it will not be necessary to endure punishment after death.

§ 3. "For there are certain sins that, although mortal, are made vital in penance, but are nevertheless not immediately healed. For there is often one who would die unless treated. One is not immediately healed; the person who before was going to die languishes but will live. But one who dies impenitent dies altogether and is tormented eternally. For one who ends impenitent, if one lived forever, would sin forever. But it belongs to God in his mercy that he brings an end to the sinner's activity. For this reason the sinner is also tormented without end, because one is never enriched with virtue; always full of iniquity, always without charity, one is tormented without end."

Question IV

GRATIAN. PART I. That it is not permitted for anyone to devote oneself to the conjugal act during a time of prayer, blessed Jerome writes in a certain sermon, saying as follows:

C. I. At the time when the debt is rendered to one's wife, one must abstain from the flesh of the Lamb.

Know, dearest brothers, that whoever renders the debt to one's wife cannot devote oneself to prayer or eat from the flesh of the Lamb.

Likewise: § 1. If the loaves of proposition could not be eaten by those who had touched their wives, how much more can that bread which descended from heaven not be violated and touched by those

who a little earlier clung to conjugal embraces? This is not because we condemn marriage, but because at the time when we are going to eat the flesh of the Lamb we ought to abstain from carnal works.

C. II. One must abstain from conjugal intercourse on the solemnities of the saints.

Likewise Augustine, [sermon II on the season, that is, on the second Sunday of Advent]. Whenever either the Lord's birthday or the other festivals arrive, we ought to abstain not only from intercourse with unbelieving concubines but even from our own wives.

C. III. On days of fasting one must abstain even from one's own wife.

Likewise Ambrose in the sermon on the Lord's Advent. Brothers, you ought not only to abstain from every impurity, but also most zealously to contain yourselves from your own wives. Let absolutely no one be joined to one's wife.

C. IV.

The same on the First Letter to the Corinthians, [at c. 7]. If a wife is taken for the sake of procreating children, not much time seems conceded for that use, because festival days, days of procession, and the very circumstances of conception and birth demonstrate that, according to the law, the use of the flesh ought to cease at those times.

C. V. The use of one's wife is commanded to cease on certain days.

Likewise Augustine in the Book of Questions of the Old and New Testaments, [question CXXVII]. A Christian is sometimes permitted to come together with one's wife and sometimes is not permitted. For on account of days of procession and fasting it is sometimes not permitted to come together, because one must abstain even from lawful things so that what is sought may be obtained more easily. Hence the Apostle says that one must abstain for a time by consent, so that you may devote yourselves to prayer. For according to the law it is also not permitted to strike or quarrel during a fast, but afterward it is permitted.

C. VI. One who does not observe continence does not truly perform penance.

Likewise John Chrysostom. One who says that one performs penance by chastisement of food promises this in vain by word unless one leaves one's bed and adds continence to fasting.

C. VII. A man who sleeps with his own wife ought to refrain from entering the church.

Likewise Gregory, [in response X to Augustine's questions]. PART II. A man sleeping with his own spouse ought not to enter the church unless washed with water.

§ 1. Although different nations of human beings hold different opinions concerning this matter and seem to observe different practices, nevertheless the custom of the Romans has always been, from more ancient times, to seek purification by washing after intercourse with one's own spouse and to refrain a little from entering the church. In saying this, we do not account marriage a fault; but because even lawful intercourse with one's spouse cannot occur without pleasure of the flesh, one

must abstain from entering a sacred place, because that pleasure can in no way exist without fault. For the one who said, "Behold, for I was conceived in iniquities," had been conceived not from adultery or fornication but from lawful marriage.

§ 2. It is therefore necessary that lawful carnal union be for the sake of offspring, not pleasure, and that the union of flesh be for the sake of creating children, not the satisfaction of vices. But if anyone uses one's spouse not carried away by desire for pleasure, but solely for the sake of creating children, that person is certainly to be left to one's own judgment whether concerning entering the church or receiving the mystery of the Lord's body and blood, because one who, though placed in fire, does not know how to burn ought not to be prohibited by us from receiving. But when not love for procreating offspring but pleasure dominates in the act of union, spouses have something to lament even concerning their union.

§ 3. But a man who has washed with water after intercourse with his spouse is then able also to receive holy communion, when according to the foregoing opinion he has been permitted to enter the church.

PART III. GRATIAN. Hence marriages are also prohibited from being celebrated on days of abstinence. Thus at the Council of Laodicea, [c. 52]:

C. VIII. It is not permitted to celebrate marriages during Lent.

One ought not to celebrate either marriages or any birthday feasts during Lent.

C. IX. On the same matter.

Likewise from the Council of Pope Martin, [c. 48]. It is not permitted to celebrate the birthdays of martyrs during Lent, but only on Saturday and Sunday to offer offerings in their commemoration. Neither birthday feasts nor marriages may be celebrated during Lent.

C. X. On the same matter.

Likewise from the Council of Lérida. One ought not to celebrate marriages from Septuagesima until the octave of Easter, during the three weeks before the festival of Saint John, and from the Lord's Advent until after Epiphany. But if it has been done, let them be separated.

C. XI. On the same matter.

Likewise Nicholas in reply to the questions of the Bulgarians, [c. 48]. I judge in no way that either taking a wife or holding banquets can fittingly occur during the Lenten season.

PART IV. GRATIAN. These things, however, are to be observed if the wife is willing to give consent; otherwise, without her consent, continence ought not to be observed even for the sake of prayer. Hence Augustine in book I On Adulterous Marriages, [c. 2]:

C. XII. Spouses cannot devote themselves to prayer except by common consent.

The Apostle did not wish spouses mutually to be deprived of the carnal debt, even temporarily so that they might devote themselves to prayer, except by consent. Hence it is also read at the Second Council of Arles, [c. 22]:

C. XIII. Penance is not to be given to married persons except by consent.

We command that penance is not to be given to married persons except by consent.

Question V

GRATIAN. PART I. That a husband cannot vow continence without his wife's consent is proved by many authorities. For Augustine says on Psalm 146:

C. I. A husband cannot observe continence unless he possesses his wife's assent.

If a husband says, "I now wish to be continent; I no longer wish to have a wife," he cannot do so. For what you wish, she does not wish. Ought she to be made a fornicator through your continence? If she marries another while you live, she will be an adulteress. God does not wish such a loss to be compensated by such a gain. Render the debt; and if you do not exact it, render it. God will account it to you as perfect sanctification if you do not exact what is owed to you but render what is owed to your wife.

C. II. A woman's consent to vowing continence to God ought not to be extorted.

Likewise Alexander II to Landulf in Corsica. You notified us that, gravely ill almost unto death and greatly terrified by the recollection and terror of your sins, you anxiously sought to become a monk; that by threats and terrors of killing your wife you extorted from her permission for this; that in this way you took monastic clothing without an abbot and sought a monastery; but afterward, when you had become healthy, overcome as a penitent by your wife's protests, wailings, and lamentations and by the dispersal of your household, you returned home; and that after many days, by the counsel of certain wise persons, you returned to the bed of the aforesaid woman. But now you seek our counsel whether it is permitted to use your wife.

If, then, it is as your messenger relates, it does not seem to us to have been done reasonably or justly. For although everything is to be carried out lawfully, holily, and justly by every person tending toward monastic life, you, contrary to the laws, threateningly and violently, being unnerved partly by fear of death and partly by the pains of your illness, followed a devious course and, having received no permission from your wife, as is said, withdrew and sought the monastery. For this ought to be done not by violence but by equal will and consent, as the holy Fathers say; nor ought a husband to choose a monastery or, after professing continence, hastily change his habit.

C. III. A husband can reject vows of continence that his wife offered to God without his consent.

Likewise from the Council at Compiègne. If a woman has placed a veil upon her head without her husband's permission, let him, if it pleases him, receive her again into marriage.

C. IV. A husband cannot rescind vows of continence that a woman promised to God with his assent.

Likewise Augustine to Ecdicia, [letter CXCIX]. What you had vowed to God by equal consent, you ought to have rendered perseveringly to the end. If he has fallen away from that purpose, you at least

should persevere most insistently. I would not exhort you to this unless he himself had consented to it for you. For if you had never possessed his assent, no number of years would have defended you. And a little later:

§ 1. Your husband had not ceased to be your husband because you were equally abstaining from carnal union. Indeed, you remained spouses between yourselves all the more holily insofar as you concordantly observed holier resolutions. Therefore, you ought to have done nothing concerning your clothing, nothing concerning gold or silver or any money or any earthly possessions of yours, without his decision. And below:

§ 2. There is a certain matronly clothing, proportioned to the person and distinct from a widow's clothing, which can fittingly belong to married members of the faithful while preserving the cause or observance of religion. If your husband was unwilling for you to lay this aside, lest you boast yourself a widow while he was living, consider that he was not to be led in this matter as far as the scandal of dissension, with the evil of disobedience being greater than the good of any abstinence. For what is more absurd than for a woman to become proud over humble clothing, when it would profit you more to obey in radiant conduct than to resist in dark garments? For although a nun's garment delighted you, even this could have been assumed more pleasingly after your husband had been respected and entreated than presumed upon without consulting him and while despising him. But if he did not permit it at all, what would perish from your purpose? Far be it that you should thereby displease God because, while your spouse had not yet died, you did not dress like Anna but like Susanna.

C. V. One who is compelled by a wife's incontinence to render the debt to her possesses the merit of continence.

The same. According to the apostolic words, even if the husband had wished to be continent and you had been unwilling, he would be compelled to render the debt to you, and God would impute continence to him if he yielded not to his own weakness but to yours, lest you fall into adultery.

§ 1. Therefore, whoever, having compassion upon a wife's weakness, renders but does not exact the debt; or if, because of one's own weakness, one takes a wife, lamenting rather that one could not exist without a wife than rejoicing that one took her; whoever sells what one knows would not make one blessed even if it remained; whoever buys what one knows will pass away, does not presume concerning these things, and from it has performed mercy with those who do not have—such a person securely awaits the last day.

C. VI. Vows of continence cannot be fulfilled without the wife's consent.

The same to Armentarius and Paulina, [letter XLV]. There can be one cause alone on account of which we would not only not exhort you to fulfill what you vowed, but would even prohibit you from fulfilling it: if perhaps your spouse, because of weakness of mind or flesh, refused to undertake this with you. For such things are not to be vowed by married persons except by consent and common will; and if it has been done too hastily, the rashness should be corrected rather than the promise fulfilled. For God does not exact it if someone vows something from another's property, but instead forbids the usurpation of another's property.

C. VII. Without the other works, neither does virginity alone save, nor do the other works avail without virginity.

Likewise Jerome, [book I Against Jovinian]. PART II. A woman will then be saved if she bears those children who will remain virgins; if she obtains in her children what she herself lost and compensates for the loss and decay of the root by flower and fruits.

[C. VIII.] The same.

I now say only this: just as virginity alone does not save without the other works, so all works are imperfect without virginity, purity, continence, and chastity.

[C. IX.] The same.

"Let one who thirsts come and drink; let one who can receive it receive it." He does not say, "Whether you will or not, you must drink and run"; rather, the one who wills, the one who is able to run and drink, that one conquers, that one will be satisfied. And for this reason Christ loves virgins more: because they voluntarily give what had not been commanded of them, and it belongs to greater grace to offer what you do not owe than to render what is exacted from you.

The Apostles, having contemplated the burden of a wife, say, "If such is a man's situation with a wife, it is not expedient to marry." Approving their opinion, the Lord rightly says: You perceive rightly that it is not expedient for a person tending toward the kingdom of heaven to take a wife; but it is a difficult matter, and not everyone receives this word, but those to whom it is given. Nature makes some human beings eunuchs; the force of human beings makes others. Those eunuchs please me whom not necessity but will has castrated. I willingly receive into my bosom those who have castrated themselves for the sake of the kingdom of heaven and, on account of my worship, were unwilling to be what they were born.

At the same time, the sentence must be considered: "Who," he says, "have castrated themselves for the sake of the kingdom of heaven." If the castrated have the kingdom of heaven as their reward, then those who have not castrated themselves cannot receive the place of the castrated.

GRATIAN. The end of this authority and the two preceding authorities are understood of the disposition toward virginity, which exists not in will alone but also in necessity. But the beginning is understood of its effect, which before a vow exists not in necessity but in the will, and is not exacted unless it is promised.

C. X. One who permitted his wife to take the veil is not permitted to marry another.

Likewise from the Council of Reims. PART III. One who has permitted his wife to take the veil shall not take another, but shall likewise be converted.

C. XI. A woman is not compelled to observe vows of abstinence that she promised with her husband's permission if he afterward prohibits her.

Likewise Augustine in Questions on Numbers, [question LIX]. PART IV. It is manifest that the law wished a woman to be under her husband in such a way that none of her vows which she vowed for the sake of abstinence are fulfilled by her unless her husband was their author by giving permission. For although the law wished it to pertain to the same husband's sin if he first permitted and

afterward prohibited, nevertheless it did not say even this: that the woman should do what she had vowed because she had already previously been permitted by her husband. It said that it was the husband's sin because he rejected what he had previously conceded; nevertheless, it did not thereby give the woman a command that, if her husband, after previously conceding it to her, afterward prohibited it, he should be contemned.

GRATIAN. From the foregoing it appears that neither can a woman render vows of continence to God without her husband's consent, nor a husband without his wife's consent. But if a vow has been promised by one with the consent of the other, even if the one who gave permission afterward wishes to render it void, that person nevertheless cannot, because in the debt of marriage the woman equally has power over the husband, just as the husband over the woman. And therefore, if either of them has released the other from one's right, one will not be able to recall the other to the former servitude.

But because in other things the husband is the head of the woman and the woman the body of the husband, a woman can promise vows of abstinence with her husband's permission in such a way that, if he afterward prohibits it, she cannot fulfill what was promised. This, as we have said, is because of the condition of servitude by which she ought to be subject to her husband in all things. Hence Augustine says in the Book of Questions on Genesis, [question CLIII]:

C. XII. Women ought to be subject to their husbands.

There is a natural order among human beings that women serve men and children serve parents, because among them this is justice: that the lesser serve the greater.

C. XIII. The husband is the head of the woman.

The same in Questions of the Old and New Testaments, [mixed from both, c. 106]. This is the image of God in the human being: that one was made from whom the others might arise, possessing God's dominion as though his vicar, because he possesses the image of the one God. Therefore, the woman was not made in God's image. For thus it says: "And God made the human being; in God's image he made him." Hence the Apostle also says, "A man indeed ought not to veil his head, because he is the image and glory of God; a woman veils for this reason, because she is not the glory or image of God."

[C. XIV.] Likewise in the same work.

It is sufficiently apparent from this how the law wished women to be subject to men and wives to be almost servants. For it established that a husband should give testimony against his wife, by which she would be stoned if it were demonstrated to be true; but he in turn is not stoned if it is established to be false. Rather, he is merely chastised and fined and is commanded to adhere perpetually to her whom he had wished to lack. But in other cases, the law commands that one who has harmed anyone by false testimony be punished by that same penalty by which, if the testimony had been proved true, the accused person would have been punished.

C. XV. On the same matter.

Likewise Jerome on the Letter to Titus, [at c. 2]. Since the husband is the head of the woman, but Christ the head of the husband, every wife who is not subject to her husband—that is, to her head—is guilty of the same crime as a husband who is not subject to his head. The word of the Lord is

blasphemed either when God's first sentence is contemned and accounted as nothing, or when Christ's Gospel is brought into disrepute because a Christian woman, who is subject under God's law, desires, against the law and faith of nature, to command her husband, although even Gentile women serve their husbands by the common law of nature.

C. XVI. A woman ought to follow her husband's decision in all things.

Likewise Augustine in Questions on Numbers, [question LIX]. Accordingly, the law did not wish a woman to vow anything to God against her own soul, so that in those same vows authority to abstain from certain lawful and conceded things should belong not to the woman but to the man. Thus, if her father had permitted her while still unmarried to fulfill vows, but she married before fulfilling them and this, when known to her husband, did not please him, she is not to fulfill them. And this is altogether without sin, because God cleansed her, as it says—that is, judged her clean. Nor must this be considered to be done against the Lord, since God himself commanded and willed it.

C. XVII. A woman has no power, but is to be subject in all things to the dominion of the husband.

Likewise Ambrose in the Book of Questions of the Old Testament, [question XLV]. It is established that a woman is subject to her husband's dominion and possesses no authority: she can neither teach, nor be a witness, nor give a pledge, nor judge.

[C. XVIII.] The same in the Hexaemeron, in the treatise on the fourth day.

Adam was deceived through Eve, not Eve through Adam. It is just that the man whom the woman called to fault should take her under his governance, lest the woman again fall through facility.

[C. XIX.] The same on the First Letter to the Corinthians, [at c. 2].

A woman ought to veil her head because she is not the image of God. But so that she may be shown to be subject, and because transgression was begun through her, she ought to have this sign: in the church, out of episcopal reverence, let her not have her head uncovered but covered with a veil; let her not have the power of speaking, because the bishop bears the person of Christ. Therefore, let her be before the bishop as though before Christ the judge, because he is the Lord's vicar. On account of original sin she ought to appear subject.

[C. XX.] The same in the Book on Paradise, [c. 10].

PART V. Nor is it without significance that the woman was made not from the same earth from which Adam was fashioned, but from Adam's own rib, so that we might know that there is one nature of the body in man and woman and one source of the human race. Therefore, man and woman were not made as two from the beginning, nor were two men or two women made; rather, first the man, and then the woman from him. For God, wishing to establish one nature of human beings and beginning this from one principle of creation, removed the possibility of many and disparate natures.

GRATIAN. Accordingly, it appears most evidently that the husband is the head of the woman in such a way that she is permitted to offer God no vows of abstinence or religious conversion without his permission. Even if they were promised with the husband's permission, she is not permitted to fulfill the vow in deed when the husband wishes to revoke what was permitted. But vows of continence can

be offered by one with the other's permission in such a way that after permission they cannot be rendered void.

Causa XXXIV

GRATIAN. A certain man was led into captivity; afterward his wife, hearing that he was dead, married another; finally he, returning from captivity, reclaims his wife; she, captivated by love of the later man, spurns the bed of the former. (Question I.) Now it is asked first whether she is guilty of adultery who married another while her husband was living. (Question II.) Second, whether, when the first returns, she is to be compelled to withdraw from the second and return to the first.

Questions I and II

GRATIAN. PART I. Both questions are determined by the authority of Pope Leo, who, writing to Nicetas, Bishop of Aquileia, [letter LXXVII, c. 1 and following], says:

C. I. A woman who married another, thinking her husband to be dead, is compelled, when he returns, to return to the former husband.

Since you say that, through the calamity of war and the most grievous assaults of hostility, certain marriages have been divided in such a way that, when the husbands were led away into captivity, their women remained destitute, believing their own husbands to have been killed or that they would never be freed from an unjust dominion, and, with anxiety compelling them, passed into marriage with others; and since, with the Lord's help, the condition of affairs has been changed for the better and some of those who were thought to have perished have returned: your charity rightly appears to doubt what ought to be ordained by us concerning the women who are joined to other husbands. But because we know it to be written that a woman is joined to a man by the Lord, and again we acknowledge the precept that a human being is not to separate what the Lord has joined, it is necessary that we believe the bonds of lawful marriages are to be restored and, with those things which hostility introduced removed, that what was lawfully contracted be restored to each one; and it must be procured with every effort that each one receive what is his own.

§ 1. Nor should he who took the person of that husband who was now thought not to exist be judged so blameworthy or regarded as an invader of another's right. For in this way many things that belonged to those led into captivity could pass into another's right, and nevertheless it belongs to complete justice that, when those persons return, their own things be restored to them. If this is rightly observed in slaves, or fields, or even houses and possessions, how much more must it be done in restoring married persons?—so that what was disturbed by the calamity of war may be restored by the remedy of peace. And therefore, if husbands returning after a long captivity so persevere in love of their wives that they desire them to return into their fellowship, what necessity introduced must be disregarded and judged blameless, and what fidelity demands must be restored. And below, [c. 4]:

§ 2. But if any women are so captivated by love of the later husbands that they prefer to cleave to them rather than pass back into lawful fellowship, they are deservedly to be censured, so that they are deprived of ecclesiastical communion, because from an excusable matter they chose the defilement of a crime, showing that, on account of their incontinence, what a just remission could

have expiated was pleasing to them. Therefore, let the marriages return to their own condition by a voluntary restoration, and let what the condition of necessity extorted in no way be drawn into the reproach of an evil will; because, just as those women who refuse to return to their husbands are to be regarded as impious, so those who return to an affection begun from God are deservedly to be praised.

C. II. When a husband or wife returns from captivity, the former marriages are to be restored.

Likewise Pope Innocent to Probus, [in letter IX]. While a woman named Ursa was held in captivity, we learned that Fontanus contracted another marriage with Restituta. But when, by the Lord's favor, Ursa returned, she approached us and, with no one denying it, demonstrated fully that she was the wife of the man mentioned. Concerning this, dearly beloved and deservedly illustrious son, we establish, with the Catholic faith supporting us, that the marriage is that which divine grace first founded, and that the union with the second woman, while the first was surviving and had not been cast off by a bill of repudiation, is in no way lawful.

C. III. A woman who, after leaving her first husband, adheres to a second cannot be reconciled to the first unless she leaves the second.

Likewise Jerome to the priest Amandus. I was not sufficiently able to perceive what he wished to mean by saying, "another man having been received by force." Evidently, after a multitude had been gathered, he seized her against her will. And did the woman who was seized afterward leave the man, but not the ravisher? Let her read the books of Moses, and she will find that, if a woman betrothed to a man was violated in a city and did not cry out, she is punished as an adulteress; but if violated by force in a field, she is innocent, and the violent man is subject to the laws. Therefore, if that sister who, as he says, suffered force so that she was joined to an adulterer wishes to receive the body of Christ and not be reckoned an adulteress, let her do penance, but only on this condition: that from the time of her penance she is not joined to the second man, who is called not a husband but an adulterer. But if this seems hard to her, and she cannot abandon the one once loved nor prefer the Lord to pleasure, let her hear the Apostle crying: "You cannot drink the cup of the Lord and the cup of demons. You cannot partake of the Lord's table and the table of demons"; and in another place: "What fellowship has light with darkness? What agreement has Christ with Belial?" I speak of a new thing—or rather, not a new but an old one, which is confirmed by the authority of the Old Testament. If she leaves the second man and wishes to be reconciled to the first, she cannot. For it is written in Deuteronomy: "If a man takes a wife and has her, and she does not find favor in his sight on account of some foulness, let him write a bill of repudiation and give it to her and send her from his house. And when, having gone out as an adulteress, she has taken a husband, and he too hates her and gives her a bill of repudiation and sends her from his house, or indeed has died, the former husband will not be able to receive her as wife, because she has been polluted and made abominable before the Lord, lest you cause the land which the Lord your God delivered to you to possess to sin."

PART III. GRATIAN. But if, under the compulsion of unavoidable necessity, a husband has fled into another province and his wife refuses to follow him, let her remain unmarried while he lives. Hence in the Council at Verberie:

C. IV. A woman who refuses to follow her husband when he is led into captivity shall remain unmarried as long as her husband lives.

If anyone, under the compulsion of unavoidable necessity, has fled into another duchy or province, and his wife, although she is able and has the means, refuses to follow him out of love for her relatives or her property, let her always remain unmarried for the whole time that her husband, whom she did not follow, lives.

PART IV. GRATIAN. But what is said of married women on the authority of Pope Leo is also to be understood of virgins: if they marry another's husband without knowledge of the fact, they are not held guilty. Hence Augustine in the book *On Faith and Works*, [c. 7]:

C. V. A virgin who unknowingly marries another woman's husband is not an adulteress.

If a virgin unknowingly marries another woman's husband, then, if she always remains ignorant of this, she will never thereby be an adulteress. But if she comes to know it, she begins to be one from the time when she knowingly lies with another woman's husband; just as, in the law of estates, each person is most rightly called a possessor in good faith for as long as he does not know that he possesses another's property. But when he has learned this and has not withdrawn from another's possession, he is then declared to be in bad faith; then he will justly be called unjust.

PART V. GRATIAN. Thus ignorance also excuses a man who unknowingly slept with his wife's sister. Hence it is read in the Council of Tribur:

C. VI. A man who unknowingly slept with his wife's sister is not compelled to leave his lawful wife.

In the wife's absence, the wife's sister went into the husband's bed, and he, thinking her to be his wife, slept with her. Concerning this, it was determined that, if he proves by a true assurance that he committed this crime unknowingly, he shall indeed perform whatever penance is adjudged to him, but shall be permitted to retain his lawful marriage. The woman, however, shall be afflicted with a worthy punishment and perpetually deprived of marriage.

[PALEA. C. VII.

Likewise Hermas in the book of the *Shepherd*, Mandate IV. I said to the shepherd: Lord, if anyone has a wife faithful in the Lord and finds her in adultery, does the husband sin if he lies with her? And he said to me: As long as he does not know her sin, the husband living with her is without fault. But if the husband knows that his wife has sinned and the woman has not done penance but persists in her fornication, and the husband has intercourse with her, he will be guilty of her sin and a participant in her adultery. And I said to him: What, then, if the woman persists in her vice? And he said: Let the husband put her away, and let the husband remain by himself. But if he puts away his wife and takes another, he too commits adultery. And I said to him: What if the woman who was put away has done penance and wishes to return to her husband; will she not be received by her husband? And he said to me: Indeed she will. If her husband does not receive her, he sins and brings a great sin upon himself; rather, he ought to receive the sinful woman who has done penance. Therefore, a husband ought not to take another after putting away his wife. This act is alike in man and woman.]

PART VI. GRATIAN. Concerning those who simply commit fornication, or with two sisters, or with a mother and daughter, or with a father and son, the same is to be understood: marriages are not to be denied to those who acted unknowingly, but are to be perpetually prohibited to those who acted knowingly. Hence it is read in the same Council:

C. VIII. Those whose incest is excused by ignorance are not prohibited from contracting lawful marriages.

If anyone has committed fornication with two sisters, and one sister did not know that her sister had previously been violated by the same man, or did not understand herself to be the sister of her whom he had previously violated, then, if he has worthily repented and has not been able to remain continent, marriages shall not be denied to them after seven years. But if they were not ignorant, let them abstain from marriage until death.

[C. IX.] Likewise from the same Council.

If anyone has committed fornication with a mother and daughter, the mother being ignorant concerning the daughter and the daughter concerning the mother, let him never take a wife; but let the women, if they wish, take husbands. But if the women themselves knew this, let them remain perpetually without husbands.

[C. X.] Likewise from the same Council.

A certain man committed fornication with a certain woman; and afterward his son, not knowing his father's deed, violated the same woman. When the father learned this, he made confession concerning himself and his son. They established that it was better that lawful marriages be permitted to those who had fallen in this way, together with worthy penance, than that they perhaps sin more grievously. But let the woman with whom they committed fornication remain without hope of marriage.

Causa XXXV

GRATIAN. A certain man, after his wife had died, joined another woman to himself in marriage, who was related to the deceased wife in the fourth degree of consanguinity but to the man in the sixth line. After three years, when children had been received from her, he is accused before the Church; he alleges ignorance. (Question I.) Here it is asked first whether it is lawful for someone to take a woman from his own kindred as wife. (Question II.) Second, whether some woman from the consanguinity of one's wife can be taken as spouse. (Question III.) Third, to what degree each person ought to abstain either from his own female blood relatives or from those of his wife. (Question IV.) Fourth, why consanguinity is reckoned to the seventh degree, in such a way that it neither extends beyond it nor stops short of it. (Question V.) Fifth, how the degrees of consanguinity are to be reckoned. (Question VI.) Sixth, who ought to affirm the kinship by oath. (Question VII.) Seventh, whether those born of incestuous unions are reckoned as children. (Question VIII.) Eighth, if a woman from consanguinity or affinity has unknowingly been taken as wife, whether she can adhere to her husband by dispensation. (Question IX.) Ninth, if it happens that the Church is deceived and separates a woman from her husband on account of consanguinity, and after four years, marriages having been celebrated on both sides, she is discovered not to have been a blood relative of the

former husband, whether the second marriages are to be dissolved and the former ones restored. (Question X.) Tenth, if the widow of someone from one's own kindred passes to a second marriage, whether offspring received from them can enter into union with someone from the kindred of the former husband.

Question I

GRATIAN. That it is lawful for us to take our own female blood relatives, or those of our wife, in marriage is proved by examples and authorities. For Abraham took Sarai, the daughter of his brother —namely, Lot's sister—as wife. Isaac received Rebecca as spouse, who was the daughter of his mother's male cousin. Jacob joined two sisters, namely Leah and Rachel, daughters of his maternal uncle Laban, to himself in marriage.

§ 1. In the law also, the Lord commanded Moses that no one should take a wife except from his own tribe and family. Likewise, if anyone died without children, the Lord commanded that his brother join the wife of the deceased to himself and raise up offspring from her for his brother. Moreover, all those to whom the law itself has come are proved to be bound by its precepts, except for those which are shown to have been nullified either by evangelical commands or apostolic institutions. But unions between blood relatives are found to be prohibited by no command of the Gospel or apostolic institution. Hence they are proved lawful now just as at the beginning.

§ 2. To these things the response is as follows: unions between blood relatives are found at one time to have been permitted on account of necessity, at another to have been commanded for a just reason. For when at the beginning one man and one woman from his side were formed by God, sisters were necessarily joined to brothers. But what is done under the compulsion of necessity ought likewise to cease when the necessity ceases. Therefore, union between blood relatives is now usurped all the more damnably insofar as it is proved less necessary. Hence a union of this kind is afterward found prohibited by the law, when the Lord says through Moses: "You shall not uncover the nakedness of your sister." Hence Augustine says in the book *The City of God*, [XV, c. 16]:

C. UN. Why it was established that we should not take our female blood relatives as wives.

Since, therefore, after the first union of the man made from dust and of his spouse from the man's side, the human race had need of the commingling of males and females in order that they might be multiplied by begetting, and there were no human beings except those born from those two, the men took their sisters as spouses. Certainly, the more ancient this is because necessity compelled it, the more damnable it afterward became when religion prohibited it. For the most certain consideration of charity was had: that human beings, for whom useful and most honorable concord was fitting, should be bound together by the bonds of diverse relationships; that one person should not have many relationships in one person, but individual relationships should be spread among individual persons, and thus many relationships might more diligently bind many persons to social life. For "father" and "father-in-law" are names of two relationships. Therefore, when someone has one man as father and another as father-in-law, charity extends itself more numerously. But the one Adam was compelled to be both to his sons and to his daughters when brothers and sisters were joined in marriage. Thus Eve his wife also was both mother-in-law and mother to the children of each sex. If

these had been two women, one the mother and the other the mother-in-law, social affection would have bound itself more abundantly.

§ 1. But at that time there was no source from which this could be done, when there were no human beings from those first two except brothers and sisters. Therefore, what could be done had to be done, so that, when there existed an abundance of women from whom wives could be taken who were now not sisters, that former thing would not only not be done where there was no necessity.

§ 2. With the human race increasing, we discern that this is so observed even among impious worshipers of many false gods that, even if marriages between brother and sister are permitted by perverse laws, a better custom nevertheless prefers to shudder at that very license and so opposes it as though it could never have been lawful.

§ 3. Therefore, the joining of male and female, insofar as it concerns the human race, is a certain seedbed of charity; but the heavenly city has need, so that it may escape the harm of generation.

GRATIAN. Accordingly, Abraham, Isaac, Jacob, and the others who took wives from their own kindred are excused by this custom, which took its origin from the very beginning of human propagation and which no law had nullified by commanding the contrary. Yet another cause of most right reason, on account of which this was done, can also be understood. While all the others were defiled by idolatry, only the family of Eber remained in the worship of the one God. Hence Abraham was cast by the Chaldeans with his brother into the fire which he refused to worship, so that by burning he might experience the divine power of its divinity, which he had disdained to worship with veneration. Therefore, lest believers slide into idolatry through union with unbelievers and so offend God—as once before the flood the sons of God, mingled with the daughters of men, had provoked him to anger—it was most rightly provided that the patriarchs, most holy men, should take wives for themselves only from their own kindred, that is, from the family of believers. Hence also, when the children of Israel, as they were about to enter the promised land, heard from the Lord that they were not to take the daughters of the Canaanites as wives for themselves nor give their own daughters to them in marriage, the Lord immediately added: "Lest they cause you to withdraw from your God and fornicate with strange gods." Hence also Ezra ordered that the Idumaean women and women of other nations, through whom the children of Israel were going to strange gods, be separated from them.

§ 1. There is also another cause why unions between blood relatives in the people of God were first permitted, or rather commanded. From the beginning God so ordered the salvation of the human race that he established the primitive Church among that people who were near to him by consanguinity of the flesh. Hence he first chose the Apostles from the Jewish people and established them as the foundation of the Church; by their preaching many from the same people, having been converted to God, furnished in themselves the origin of the Church. Thereafter, the Jewish people having been abandoned in the blindness of their unbelief, the preaching of the Gospel was transferred to the nations, who were alien from Christ both in faith and in kinship of the flesh; and Christ, as though spurning union with a female blood relative, chose for himself a wife from an alien kindred, fulfilling what he had foretold through the prophet: "In your sins I sent away your mother as an adulteress and a repudiated woman." And likewise through another Prophet: "I shall call the people not mine my people." Therefore, as a sacrament of this matter, unions between blood relatives were at first permitted among the people but are now prohibited. And because a faithful people is found

not only in one family but in the whole multitude of nations, each person is permitted to take a wife not from his own kindred but from any other.

§ 2. But that statement that the precepts of the law which are proved to have been nullified neither by evangelical nor apostolic institutions are to be observed is indeed true; but since the Apostle proves that all figurative things were given for a time, and therefore affirms that, when the truth comes, those things are no longer to be observed, and since this, as was shown above, is proved to have been instituted by God for the sake of a sacrament, it is most certainly established that this too was revoked together with the other figurative things. Nevertheless, just as the Apostle by way of counsel added certain things which were not found defined by evangelical precepts, and yet were not therefore repudiated by the other Apostles as rash or superfluous, so also the Church, after the apostolic institutions, added certain things by a counsel of perfection, such as those concerning the continence of ministers, the confection of the mysteries, and the celebration of the offices; these are in no way to be repudiated but are to be received with diligent veneration. Therefore, although unions between blood relatives are not found prohibited by evangelical and apostolic precepts, they are nevertheless to be avoided, because they are found to have been delimited by ecclesiastical institutions.

Questions II and III

GRATIAN. Therefore, because it is necessary to abstain from unions between blood relatives, as has been proved, it must be seen to what degree one ought to abstain from one's own female blood relatives, or whether it is lawful to take as spouse any woman from the kindred of one's own wife.

Pope Gregory writes thus concerning these matters in the Council of Meaux:

C. I. No one shall take a wife from his kindred down to the seventh generation.

Concerning the affinity of consanguinity, it was resolved to observe the degrees of kinship down to the seventh generation. For the inheritance of property, established through the legal determinations of instruments, also extends the succession of heirs to the seventh degree. For they would not succeed unless it were owed to them from the stock of kinship.

C. II. Those who take their female blood relatives as wives are branded with infamy.

Likewise Pope Callistus, [letter II to the bishops of Gaul]. Unions between blood relatives are prohibited from being made. Why? Because both divine and secular laws prohibit them. Therefore, the divine laws cast out not only those who do these things but also those who issue from them, and even call them accursed. The secular laws, moreover, call such persons infamous and repel them from inheritance. But we, following our fathers, brand them with infamy and judge them to be infamous, because they are bespattered with the stains of infamy; nor ought we to receive as men or to receive the accusations of those whom the secular laws reject.

§ 1. But we call those persons consanguineous whom the divine laws and the laws of emperors, Romans, and Greeks call consanguineous and receive in inheritance, and whom they cannot repel.

C. III. Affines can be joined in the fifth generation; if they are found joined in the fourth, they are not to be separated.

Likewise Pope Fabian. Concerning relatives who come into affinity through husband and wife: when the wife or husband has died, let them be joined in the fifth generation; if they are found joined in the fourth, let them not be separated. Nevertheless, in the third degree of relationship it is not lawful to take another's wife after his death. A man shall be joined in marriage equally with his own female blood relatives and with his wife's female blood relatives after his wife's death.

[C. IV.] The same.

Those who take a woman related by blood as wife and are separated shall not be permitted to join other wives to themselves in marriage as long as both are living.

GRATIAN—unless they are excused by ignorance. Hence in the Council at Verberie:

C. V. Those who unknowingly commit incest are not prohibited from taking spouses.

If anyone has committed fornication with a mother and daughter, the mother being ignorant concerning the daughter and the daughter concerning the mother, let him never take a wife; but let the women, if they wish, take husbands. But if the women themselves knew this, let them remain perpetually without husbands.

[C. VI.] Likewise from the same Council.

If a man has committed fornication with a woman and his brother, unaware of this, has taken the same woman as wife, let the brother do penance because he concealed the crime from his brother, and let him marry after the penance. But let the woman do penance until death and remain without hope of marriage.

GRATIAN. But the other authorities are to be understood concerning those who are unknowingly joined. Hence Pope Julius:

C. VII. No one shall take a wife from the relationship of his own blood or his wife's down to the seventh degree.

We permit no one of either sex to take a wife from the relationship of his own blood or his wife's down to the seventh degree of lineage, or to be joined with the stain of incest. Moreover, we also added this: that, just as it is not lawful for any Christian to take a spouse from his own consanguinity, so it is also not lawful to take one from the consanguinity of his wife, on account of the unity of flesh.

C. VIII. Incestuous persons are worthy of no name of marriage.

Likewise from the Council of Agde, [c. 61]. Concerning incestuous unions, we reserve absolutely no pardon unless they have healed the adultery by separation. But those whom it is deadly even to designate as incestuous are to be considered worthy of no name of marriage.

§ 1. For we judge these persons to be such: if anyone has polluted by carnal union the widow of his brother, who had previously existed almost as his sister; if any brother has taken his own full sister as wife; if anyone has taken his stepmother; if anyone has joined himself to his female cousin or niece; if anyone mingles with the widow or daughter of his maternal uncle, or the daughter of his paternal

uncle, or his own stepdaughter; or one who has polluted by intercourse or taken as wife any woman from his own consanguinity, or a woman whom his blood relative had. All these persons we do not doubt to be incestuous both under the ancient law and under this constitution, and we command that they remain and pray among the catechumens until lawful satisfaction. We so prohibit this at the present time that we do not dissolve those things which have been established hitherto.

§ 2. Certainly, those to whom an unlawful union is forbidden will have liberty to enter a better marriage.

C. IX. Incestuous persons are to be excommunicated until satisfaction.

Likewise from the Council of Lérida, [c. 4]. Concerning those who defile themselves with the pollution of incest, it was resolved that, for as long as they persevere in that detestable and unlawful carnal union, they are to be admitted in church only as far as the Mass of the catechumens; nor will any Christians be permitted to take food with them, as the Apostle commanded.

C. X. No one shall take as wife a woman known by his blood relative or stained by any pollution.

Likewise Pope Gregory to Felix, Bishop of the city of Messina, [book XII, letter 31]. It is not and will not be lawful for any Christian to take in marriage either a woman whom someone from his own consanguinity had as wife or one whom he stained by any unlawful pollution, because such intercourse is incestuous and abominable to God and all human beings. We read that it was established by the holy Fathers that incestuous persons are to be considered worthy of no name of marriage.

GRATIAN. That is, according to the order of nature; but if extraordinarily, it is not so. For Urban II says to Hugh, Bishop of Grenoble:

C. XI. Extraordinary pollution does not impede affection in natural relations.

Extraordinary pollution, when admitted only in natural relations or repeated more frequently short of the marital effect, does not appear to impede marriage, provided that, after the sacraments have been furnished, it is established to have occurred as was signified to us by your letters, although that pollution itself is criminal and damnable.

C. XII. No one shall take as spouse the widow of his wife's blood relatives down to the third generation.

Likewise Pope Julius. This too was established: let no one take in marriage the widow of his wife's father, the widow of his wife's brother, or the widow of his wife's son. Let no one take as wife the widow of his wife's blood relatives down to the third generation; but if they are found joined in the fourth or fifth, let them not be separated.

C. XIII. Each person is equally to abstain from his own blood relatives and those of his wife.

The same. Let a man be considered equally connected to his own blood relatives and to his wife's blood relatives.

C. XIV. The same consanguinity is to be observed in one's own kindred and that of one's spouse.

Likewise Isidore from the Council of Mâcon. Certainly, the consanguinity that is to be observed in one's own person is undoubtedly to be guarded by the law of marriage in the kindred of one's wife. Because it is established that those two were in one flesh, each kindred must therefore be believed common to them, as it is written: "The two shall be in one flesh."

C. XV. A daughter-in-law is to be considered no differently from a daughter.

Likewise Augustine, [book XXII *Against Faustus*, c. 61]. If husband and wife are now not two but one flesh, a daughter-in-law is to be considered no differently from a daughter.

C. XVI. Each person ought to observe his own stock down to the seventh generation.

Likewise Gregory to the bishops of Gaul. We decree that each person is to observe his own stock down to the seventh generation, and, for as long as they recognize themselves to be near by affinity, we deny them access to conjugal union. But if they do it, let them be separated.

C. XVII. On the same matter.

Likewise Nicholas to the suffragans of the see of Amalfi. Let no one take a wife from his own consanguinity until after the seventh generation, or for as long as the kinship can be recognized.

§ 1. But let a layman who has a wife and concubine at the same time not communicate with the Church.

C. XVIII. For as long as the generation between any persons is recalled or retained in memory, they shall not be joined to one another.

Likewise from the Council of Worms, [c. 32]. In the union of the faithful we do not define the number of the generation, but establish that no Christian may take a wife from his own consanguinity or kinship for as long as the generation is recalled and recognized or retained in memory.

C. XIX. No one shall take a wife from the relationship of his own blood down to the seventh degree.

Likewise from the Council of Lyon. Let no one take wives from the relationship of his own blood down to the seventh degree, nor without the blessing of a priest. But let those who are about to marry dare to marry after being blessed by a priest.

GRATIAN. By the foregoing authorities everyone is prohibited from union with blood relatives down to the seventh generation. But that passage of Gregory to Augustine, Bishop of the English, is objected, [c. 6]:

C. XX. The English are permitted to be joined in the fourth or fifth generation.

A certain Roman law permits the son and daughter either of a brother and sister, of two full brothers, or of two sisters to be joined. But we have learned by experience that offspring cannot grow from such a marriage. Hence it is necessary that the fourth or fifth generation of the faithful be lawfully joined to one another.

§ 1. But when the same most humble Father Gregory, a long time afterward, was asked by Felix, prelate of Messina in Sicily, whether he had written to Augustine that marriages contracted among the English in the fourth generation should by no means be dissolved, among other things he supplied this reason: You should know with complete certainty that what I wrote to Augustine, bishop of the nation of the English—your alumnus, as you recall—I wrote specially to him and also to the nation of the English, which had recently come to the faith, and not generally, lest, through fear of harsher things, it withdraw from the good it had begun. Hence the whole Roman city also stands as my witness. Nor did I write these commands to them with the intention that, after they had been consolidated in the faith with a firm root, they should not be separated if found within their own consanguinity, or should be joined within the line of affinity, that is, down to the seventh generation. Rather, because they were still neophytes, it was first necessary to tolerate unlawful things among them and to instruct them by words and examples. For according to the Apostle, who says, "I gave you milk to drink, not solid food," we granted things to be observed at those times to them only, not to their descendants, as was stated, lest the good that had been planted with a weak root be burned away, but rather be made somewhat firm and guarded unto perfection.

GRATIAN. Likewise, that passage of the Council of Chalon is objected:

C. XXI. No one shall any longer be joined in marriage in the fifth or sixth generation.

We forbid that anyone any longer be joined in marriage in the fourth, fifth, or sixth generation. But where it is found to have occurred after the prohibition, let the union be separated.

GRATIAN. Since marriage is prohibited in the sixth generation by this authority, it appears to be permitted in the seventh. But the degrees of kinship are variously reckoned according to certain persons. For some place the father in the first degree and the children in the second. Others call the children the first degree, denying that there is a degree of kinship between father and son, since father and son are proved to be one flesh. Therefore, the authorities that prohibit union within consanguinity down to the seventh degree place the father in the first degree; but those that prohibit it down to the sixth degree call the children the first degree. Thus it happens that the same persons, according to this diversity, are found in the sixth or seventh degree.

§ 1. Likewise, that passage of Fabian, by which affines are commanded to be joined in the fifth generation, appears contrary to that decree of Pope Julius: "Just as it is not lawful for any Christian to take a spouse from his own consanguinity, so it is also not lawful to take one from his wife's consanguinity, on account of the unity of flesh." Similarly, it is also found contrary to that chapter of Gregory: "Nor her whom someone from his own consanguinity had as wife, etc." But that passage of Fabian is to be understood of two persons joined to one another by affinity, such as the wives of two brothers. If it happens that one of them is joined to someone in marriage, after his death the man will

not be able to take the surviving affine as spouse unless they are found in the fifth degree of affinity. Hence one who takes someone's stepmother as wife will not be able, after her death, to take the wife of the stepson. Hence the same Pope Julius also says elsewhere: "The widow of his wife's blood relatives"—he does not say "a blood relative of his wife," but "the widow of the blood relatives"—"let no one take as wife down to the fourth generation." But Paschal II, writing to Bishop Reginus, assigns a third kind of affinity, union within which is found prohibited no further than the second degree. For he says:

C. XXII. The wives of two cousins cannot marry one and the same man.

Moreover, the justice of public decency, even apart from canonical authority, forbids the wives of two cousins from marrying one man, although at different times, the one after the death of the other. And your prudence knows that one must abstain from the wife's blood relatives just as from the husband's.

GRATIAN. But those passages of Gregory and Julius are understood of the consanguinity of a husband or wife, so that after the death of either of them the survivor is joined in marriage to no one from the kindred of the deceased. It has been demonstrated to what degree each person ought to abstain from his own consanguinity or the kinship of his wife.

Question IV

GRATIAN. It is now asked why union within consanguinity is prohibited down to the sixth degree. Isidore writes about these matters as follows in book XI of the *Etymologies*, c. 6:

C. UN. Why consanguinity is observed down to the sixth degree.

When consanguinity, gradually separating itself through the orders of its lines of descent, has withdrawn itself down to the last degree and has ceased to be relationship, then for the first time the law will receive it into the bond of marriage and will, as it were, call back what is fleeing. Consanguinity was established down to the sixth degree of lineage for this reason: so that, just as the generation and condition of the human being is ended in the six ages of the world, so the relationship of lineage may be terminated in as many degrees.

Question V

GRATIAN. Concerning how the degrees of consanguinity are to be reckoned, blessed Isidore speaks as follows:

C. I. How the degrees of consanguinity are distinguished.

The series of consanguinity is distinguished in six degrees in this manner: let the son and daughter—that is, the brother and sister—be the trunk itself. When they have been separated apart, these little branches emerge from the root of that trunk: grandson and granddaughter, the first; great-grandson and great-granddaughter, the second; great-great-grandson and great-great-granddaughter, the third; descendants in the next generation, the fourth; descendants in the following generation, the fifth; the grandson of the male descendant and the granddaughter of the female descendant of that generation, the sixth.

C. II. How the degrees of consanguinity are to be reckoned.

Likewise Alexander II writes to the clergy of Naples and to all bishops and judges established throughout Italy concerning this matter, saying as follows. A newly arisen question concerning the degrees of consanguinity has been brought to the Apostolic See. Certain persons unskilled in the laws and canons, stirring up this question, strive to number those same degrees of relationship contrary to the sacred canons and ecclesiastical custom, affirming in a new and unheard-of error that full brothers or sisters are among themselves in the second generation, their sons or daughters in the fourth, and their grandsons or granddaughters in the sixth. Reckoning the line of descent in this manner and terminating it in the sixth degree of this kind, they say that thereafter men and women can contract the rights of marriage with one another. And to confirm this profane error they assume as an argument the secular laws which Emperor Justinian promulgated concerning the successions of blood relatives. Trusting in these, they attempt to show that brothers are numbered in the second degree, their children in the fourth, and grandsons and granddaughters in the sixth. By thus terminating the genealogical line, they strive by a certain perverse cunning to disturb the reckoning of the holy Fathers and the ancient computation of the Church handed down even to us. But with God's favor, we took care to examine this question at a synod held in the Lateran consistory, bishops, clerics, and judges from diverse provinces having been summoned for this work.

§ 1. Finally, after the laws and sacred canons had long been discussed, we found distinctly that one computation is made by the laws and another by the canons for different reasons. For in the laws mention of the degrees was made for no reason other than that inheritance or succession might be transferred among blood relatives from one person to another. But in the canons the line of descent is reckoned so that it may be shown openly down to what generation one must abstain from marriages with blood relatives. There it is prescribed that inheritance be conferred upon relatives in a lawful manner; here, that marriages be celebrated rightly and canonically among the faithful. In the laws the degrees are not distinctly numbered except down to the sixth; but in the canons they are distinguished down to the seventh generation. Therefore, for this reason—because inheritances cannot be transferred except from one person to another—the secular emperor took care to assign individual degrees to individual persons. But because marriages cannot occur without two persons, the sacred canons therefore place two persons in one degree.

§ 2. Nevertheless, if each computation is considered attentively and subtly, it will be most manifest that they have understood the same thing, that the same judgment is in them, and that they arrive at the same terminus. For Justinian did not define in his laws the degree down to which consanguinity itself endures. But the canons number no generation beyond the seventh. For after defining the sixth degree, the emperor added in those laws: "Let it suffice to have shown thus far how the degrees of kinship are numbered. For from these it is plain to understand how we ought to number the further degrees. For each person generated adds a degree." Behold, in these words it is openly shown that degrees of the kind these persons reckon ought to be numbered not only down to the sixth but even beyond it, since he decrees that further degrees beyond the sixth are to be numbered. For where he names further degrees, he openly indicates that there are not only six degrees, but that when six have ended still others are to be numbered. Nor is this remarkable, since in what precedes the emperor himself affirmed a right even in the tenth degree; by saying this he confesses more clearly than light that there are not only six.

§ 3. Therefore, let those whom an error of this kind has hitherto struck awaken and, if they can, direct the keenness of their minds. For indeed, where succession is transferred among agnates or cognates according to the laws, there is no doubt that they are blood relatives. For they would not succeed to one another unless, according to Justinian's testimony, they were related to one another in the tenth degree; therefore, those who thus succeed to one another are blood relatives to one another. But if they are blood relatives to one another in the tenth degree, consanguinity is not terminated—as those persons acknowledge—in the sixth degree alone. What, then, will they say? For when the degrees are reckoned as they number them, consanguinity either ends in the sixth degree or it does not. But if it ends, the laws upon which they rely, which command blood relatives to succeed to one another in the tenth degree, will be false. But if consanguinity does not end in a sixth degree of this kind, those who refuse to reckon consanguinity beyond that sixth degree will be speakers of falsehood. Therefore, either the laws will be false or those who terminate the generation in this way.

§ 4. But so that the laws may be truthful and the canons true, let us say what the truth maintains: namely, that consanguinity is not terminated in a sixth degree of this kind, and according to the canons it is terminated in the seventh degree. For each computation, as we said above, is concluded at one end. Indeed, two legal degrees make one canonical degree. Accordingly, brothers who according to the secular laws are said to be in the second degree are numbered in the first according to the canons. The sons of brothers, who are numbered there in the fourth, are reckoned here in the second; but grandsons, who are there in the sixth, are numbered here in the third. So thereafter those who are written in the laws to be in the eighth and tenth are defined in the canons to be in the fourth and fifth. And the same is to be understood concerning the rest: those who according to the canons are said to be in the sixth or seventh are understood according to the laws to be in the twelfth or fourteenth.

§ 5. Most prudent Pope Gregory, understanding this computation, when asked in what generation the faithful ought to be joined, adduced the secular laws themselves as testimony and wrote back to Augustine, bishop of the English, as follows: "A certain earthly law in the Roman republic permits the son and daughter either of a brother and sister, of two full brothers, or of two sisters to be joined. But we have learned by experience that offspring cannot grow from such a union. Hence it is necessary that the union of the faithful may lawfully be joined in the third or fourth generation. For one must altogether abstain from the second, which we mentioned." Behold, it is openly shown here that the sons and daughters of brothers are numbered in the second generation. And if the sons or daughters of brothers are numbered in the second, it cannot be that the brothers themselves are not in the first. But if brothers are reckoned in the first, their children in the second, there is no doubt that their grandchildren are in the third, great-grandchildren in the fourth, and so concerning the rest down to the seventh.

§ 6. But there are certain persons who take from these words of Saint Gregory, in which he says that the faithful may be joined in the third or fourth generation, an occasion for contracting unlawful marriages, saying that they can justly do what so prudent a doctor defined by his judgment. Accordingly, those who strive to defend themselves with this covering should observe in the judgments of the same Father that he commanded this not generally to everyone but specially to the nation of the English. For afterward, when asked by Felix, prelate of Messina in Sicily, whether what

he had commanded Augustine was to be observed generally by the whole Church, he showed most openly that he had commanded this to no others than that nation, lest they abandon the good they had begun through fear of harsher things. But he judged that, after they had been consolidated in the faith with a firm root, this was always to be observed by them and by the universal Church: that no one should dare to join to himself in marriage anyone from his own consanguinity or affinity within the seventh generation.

§ 7. Behold, it has been openly shown from both the words of the law itself and the authority of most prudent Pope Gregory what we ought to understand concerning the numbering of the degrees of consanguinity. Yet another reason also refutes those adversaries in like manner. For if, as they acknowledge, consanguinity ended in that sixth degree, all the little branches of persons contained beyond that degree in the depiction of the tree would have to be cut off as superfluous. But because all those who are numbered in the depiction of the aforesaid tree consist from one kindred, they can never be separated from one another without diminishing the consanguinity, just as hands, arms, and feet cannot be cut from one's own body without injury to the person.

§ 8. That precept of the sacred canons which commands abstention from one's own consanguinity for as long as the generation is recalled or retained in memory also does not disagree with the aforesaid reckoning of kindred. For it is numbered canonically and customarily in seven degrees, beyond which neither consanguinity is found, nor are names of degrees discovered, nor can succession be extended any farther, nor can the generation be recalled from memory by anyone.

§ 9. But lest any ambiguity henceforth be able to remain in this reckoning of consanguinity, we have judged that another numbering which certain persons make must also be examined in this disputation. For there are certain persons who begin to number the genealogy not from brothers but from their children, that is, paternal or maternal cousins, saying that the children of brothers ought to be reckoned in the first generation because the brothers exist as a certain trunk from which the other little branches arise. But neither can this reckoning of degrees, if rightly understood, differ in judgment from that which we explained above. For those who take the beginning of the numbering from the children of brothers do not advance beyond the sixth generation. Rather, just as there are six ages of the whole world and likewise six of human life, so too they think that only six generations are to be reckoned in consanguinity; when these have ended, they say that the beginning of a new union can be made, so that they can, as it were, call back the fleeing consanguinity.

§ 10. Accordingly, this computation, which begins from the children of brothers and is numbered down to the sixth, has as much force as that which begins from brothers and reckons down to the seventh. Nor does any difference exist in sense, although a variation appears in the number of degrees. For the last generation, if it takes the beginning of the numbering from brothers, is found to be the seventh; if from the children of brothers, it is found to be the sixth. Therefore, with the degrees of consanguinity determined in this way, by apostolic authority we admonish you, brothers and sons, that you make known to everyone that the genealogical line is to be reckoned just as the holy Fathers decreed that it be numbered and as the ancient custom of the holy and universal Church is shown long ago to have reckoned it through long periods. For if anyone with a perverse and obstinate mind wishes to deviate from the right path of the Apostolic See and contends that in celebrating marriages the degrees of kindred are to be numbered otherwise than by us, first that

person will be struck by heavenly punishment for his rashness, and afterward let him know that he is to be slain by the sword of perpetual anathema.

C. III. Why the wife's blood relatives are said to pertain to the husband, and how affinities are to be reckoned.

Likewise Gregory. Moreover, concerning affinity, which you say is the kinship that pertains to the husband on the wife's side or to the wife on the husband's side, the reason is most manifest: if, according to the divine sentence, my wife and I are one flesh, then surely her kindred and mine become one relationship for her and for me. Therefore, my wife's sister and I will be in one and the first degree; but her son will be in the second degree from me, and her granddaughter in the third. The same must be done from either side in the other successions.

§ 1. But I ought to regard the wife of a relative, of whatever degree he may be, just as though she were a woman of my own relationship in that same degree. Undoubtedly, the same is fittingly to be observed by my wife concerning her husband's relationship in all degrees of kinship. But those who think otherwise are antichrists, against whom you ought to guard all the more solicitously insofar as you detect more openly that they assail the divine laws.

C. IV. How the degrees of kindred are reckoned.

Likewise Pope Zacharias. We reckon the degrees of kindred in this manner: indeed, my brother and I are one generation and make the first degree; we are separated by no degree. Again, my son and my brother's son are the second generation and make the second degree; nor are they separated from one another by any degree. And the other successions are reckoned in this manner. Moreover, concerning affinity, which you call kindred, etc., as above in the chapter of Gregory.

C. V. It is an equivocation when the wife's sister is called a *cognata*.

Likewise Pope Alexander II. But that your wife's brother or sister are called *cognati* occurs by the law of equivocation and the necessity of common usage rather than through any ground of kinship. For a brother's wife is called *fratrissa* rather than *cognata*. A husband's brother is called *levir*. The wives of two brothers are called *ianitrices*, as though wearing out the same door or entering through the same door. A husband's sister is called *glos*. But a sister's husband has no special name, nor does a wife's brother.

C. VI. The names of the degrees of ascendants, descendants, and those coming from the side.

Likewise Isidore. In the first degree, the father and mother are contained in the ascending line; the son and daughter in the descending line. No other persons are joined to them.

§ 1. In the second degree, the grandfather and grandmother are contained in the ascending line; the granddaughter in the descending line; brother and sister in the transverse line. These persons are doubled. For grandfather and grandmother are understood both from the father and from the mother. These persons are likewise doubled in the following degrees, in the same order, according to the substance of those who stand in each degree. (These persons in the second degree are called double for this reason: there are two grandfathers, paternal and maternal. Likewise, there are two kinds of grandchildren, those begotten from a son and those from a daughter. Brother and sister come from

the transverse line, that is, either the father's brother or the mother's brother, who is named either paternal uncle or maternal uncle; and they themselves too are doubled in this order.)

§ 2. In the third degree there come above the great-grandfather and great-grandmother; below, the great-grandson and great-granddaughter. From the oblique line come a brother's or sister's son or daughter; paternal uncle and paternal aunt, that is, the father's brother and sister; maternal uncle and maternal aunt, that is, the mother's brother and sister.

§ 3. In the fourth degree there come above the great-great-grandfather and great-great-grandmother; below, the great-great-grandson and great-great-granddaughter. From the oblique line come a brother's or sister's grandson and granddaughter; male and female paternal cousins, that is, a paternal uncle's son or daughter; male and female maternal cousins, that is, a maternal uncle's or maternal aunt's son or daughter; male and female cousins through a paternal aunt, that is, a paternal aunt's son or daughter; likewise, the cousins who are born from two sisters. To these are added the great paternal uncle and great paternal aunt, that is, the paternal grandfather's brother and sister; and the great maternal uncle and great maternal aunt, that is, the brother and sister of either the paternal or maternal grandmother.

§ 4. In the fifth degree there come above the third great-grandfather and third great-grandmother; below, the third great-grandson and third great-granddaughter. From the oblique line come a brother's or sister's great-grandson and great-granddaughter; the son or daughter of a male or female paternal cousin, a male or female cousin through a paternal aunt, or a male or female maternal cousin; the nearer male cousin and nearer female cousin, that is, the son or daughter of a great paternal uncle, great paternal aunt, great maternal uncle, or great maternal aunt. To these are added the great-great paternal uncle and great-great paternal aunt. These are the brother and sister of the paternal great-grandfather; also the great-great maternal uncle and great-great maternal aunt. These are the brother and sister of the paternal and maternal great-grandmother and of the maternal great-grandfather. (This class cannot be declared in any degrees other than that in which it is written, nor by any other terms.)

§ 5. In the sixth degree there come above the fourth great-grandfather and fourth great-grandmother; below, the fourth great-grandson and fourth great-granddaughter. From the oblique line come a brother's or sister's great-great-grandson and great-great-granddaughter; the grandson and granddaughter of a male or female paternal cousin, a male or female cousin through a paternal aunt, a male or female maternal cousin, a great paternal uncle, great paternal aunt, great maternal uncle, or great maternal aunt; the son or daughter of a nearer maternal cousin; the paternal great-great-great-uncle and paternal great-great-great-aunt. These are the brother and sister of the paternal great-great-grandfather; also the maternal great-great-great-uncle and maternal great-great-great-aunt. These are the brother and sister of the paternal and maternal great-great-grandmother and of the maternal great-great-grandfather. (These too cannot be explained more fully than the author himself discussed them.)

§ 6. Those who are blood relatives in the direct line above and below in the seventh degree are not called by names proper to them; but in the transverse line are contained a brother's or sister's third great-grandson and third great-granddaughter, and the sons and daughters of a maternal cousin.

§ 7. Six degrees of succession were established for this reason: beyond them, by the nature of things, neither can names be found nor can succession be extended farther. (In these six degrees are contained all the names of every relationship; beyond them neither is affinity found nor can succession be propagated farther.)

GRATIAN. By the authority of blessed Isidore, Gregory, and Alexander, it has been sufficiently shown how many degrees of consanguinity or affinity there are, how they are to be reckoned, and by what names they are called.

Question VI

GRATIAN. PART I. It is now asked upon whose accusation or testimony a union between blood relatives is to be dissolved. Pope Fabian decreed as follows concerning these matters:

C. I. Only blood relatives—or, if the line of descent has failed, elderly and truthful persons—shall reckon the relationship in a synod.

Let no one accuse the blood relatives of strangers or reckon their consanguinity in a synod; rather, let the relatives to whose knowledge it pertains do so, that is, father and mother, sister and brother, paternal uncle, maternal uncle, paternal aunt, maternal aunt, and their offspring. But if the entire line of descent has failed, let the bishop inquire canonically from the older and more truthful persons to whom the same relationship is known; and if the relationship is found, let the persons be separated.

[PALEA. C. II.

A decree of Pope Celestine sent to the Church of Florence. It appears to us that the second woman, whom he took contrary to the Church's prohibition, is not his wife, even if he had not betrothed the first. For the authority of both divine and human law proclaims that what is done contrary to the Church's prohibition and order is not to be regarded as ratified, since it is disordered. Therefore, because the woman whom he irregularly brought in is not his wife while the prohibition stands against it, he must be compelled to receive the woman whom he swore to marry and betrothed and from whom he begot offspring, so that the sanctity of the oath is not treated as worthless, the fidelity mutually promised is observed, the offspring is nourished and educated in the worship of God, and others cannot thereby take an occasion for perjuring themselves and deceiving others.

§ 1. But that parents, brothers, and blood relatives of either sex are admitted to give testimony for joining or dissolving the marriages of their own relatives is approved both by ancient custom and by the laws. For this reason parents are admitted especially, and, if the parents are lacking, those nearer, because each person labors to know one's own genealogy both from witnesses and charters and also from the recitation of ancestors. For who ought to be received more than those who know better and whose interest is involved, such that, if they were not present and did not furnish consent, no marriage is made according to the laws?

§ 2. But what is read—"A father shall not be received in the cause of his son, nor a son in the cause of his father"—is true in criminal causes and contracts. But in joining and disjoining a marriage they are fittingly received on account of the prerogative of marriage itself and because it is a matter receiving favor.]

C. III. Who ought to affirm relationship by oath.

Likewise Urban to Richerius, Bishop of Genoa. We notify you that, after two or three of the nearer relatives of the wife—whether now deceased or still living—of the man who is accused have affirmed this relationship by oath, or if three or two of the older Genoese to whom this relationship is known, who are of good repute and truthful testimony, have affirmed the consanguinity in the aforesaid manner with love, fear, payment, and every evil zeal removed, the marriages are to be dissolved without any delay. But if relatives or strangers testify to the relationship by words alone and refuse or are unable to prove it by oath, the marriage is by no means to be dissolved. Rather, an appropriate penance is to be imposed upon them for the infamy or the stain of sin, if perhaps they have contracted any in this matter.

C. IV. Those whose incest no one affirms by oath are left to their own confession.

Likewise from the Council of Pope Urban held in Apulia. If two or three men have affirmed consanguinity by oath, or if the persons themselves have perhaps confessed, let the marriages be dissolved. But if neither occurs, let the bishops adjure them by baptism, by faith in Christ, and by the judgment of Christ, in true obedience, to make manifest whether they recognize themselves to be blood relatives, as report has it. If they deny it, they are to be left to themselves; yet in such a way that, if they have something else in their conscience, they should know themselves separated from the thresholds of the church, from the body and blood of the Lord, and from the communion of the faithful, and made infamous, until they desist from the crime of incest. If they have separated themselves by the judgment of the bishops, those who are young shall not be prohibited from contracting other marriages.

PART II. GRATIAN. Behold, upon whose accusation or testimony unions between blood relatives are to be dissolved. The form of oath to be exacted from an accuser is found in the Roman Order. It is as follows:

C. V. The accuser's oath.

Concerning that kinship which is said to exist between N. and this spouse of his, N., whatever you know concerning it or have heard from your neighbors or your older relatives, you shall conceal from your bishop—or from his envoy whom he has ordered to investigate it—by no device, nor on account of fear, love, reward, or consanguinity, whenever he questions you concerning it. So may God and the relics of these saints help you.

C. VI. The oath of the witnesses.

That oath which this man swore concerning that kinship which is reckoned between the son and his spouse N., you will observe it insofar as you know. So may God help you.

PART III. GRATIAN. This is not the oath of separation but the synodal oath instituted by Pope Eutychian. For he says:

C. VII. The synodal oath.

A bishop sitting in a synod, after an appropriate address, ought to call into the midst seven men from the people of that parish—or more, as he sees expedient—who are more mature, more honorable,

and more truthful. When the relics of the saints have been brought forth, he must bind each of them by an oath such as this: From this time forward, whatever you know, have heard, or afterward will inquire into which has been done or will be done in this parish contrary to God's will and right Christianity, if it occurs in your days, provided only that it comes to your knowledge in any way—if you know or have been informed that it is a synodal cause and pertains to the ministry of the bishop—you shall in no way conceal it on account of love, fear, payment, or kinship from the bishop or from his envoy whom he has ordered to investigate it, whenever he questions you concerning it. So may God and those relics of the saints help you. This oath which this man swore concerning a synodal cause, you will observe it for your own part in this way, insofar as you know or have heard, or will inquire from this day forward. So may God help you.

PART IV. GRATIAN. The former oath was taken from this one, with its beginning slightly altered. Moreover, Pope Innocent II prescribes the oath of separation to Otto, Bishop of Lucca, saying:

C. VIII. The oath of those who prove consanguinity.

Concerning that kinship about which you wished to consult us and because of which an appeal was also made to our hearing, we received writings from other brothers, who indeed narrated the cause itself in diverse ways. At first the reckoners of that kinship are said to have disagreed both in the degrees and in the names of the persons, but afterward to have agreed in one of them. Yet in cases of this kind the quality of the persons who wish to assert something against anyone must be considered with the greatest care. They must also furnish an oath that they say this against those who are at issue neither from favor nor for payment nor from hatred of anyone, but rather because they believe it to be true in this way and to have heard it thus from their ancestors. In all these matters no variation or contradiction ought to be found.

PART V. GRATIAN. But those who are separated from one another will furnish an oath of this kind.

C. IX. The oath of separation.

From this day forward, by no device will you associate yourself with this female blood relative of yours, either in marriage or in adultery; nor will you eat and drink with her at one table or remain under one roof, except in a church or another public place where no evil suspicion can exist, so that there, before suitable witnesses, you may speak together for a certain necessity. Nor will you take another spouse unless perhaps, after penance has been performed, permission has been given to you by your bishop or his envoy. So may God help you.

PART VI. GRATIAN. But no one is permitted to put away his wife on the occasion of consanguinity and take another unless the cause has first been proved. Hence Alexander II to William of Mosterico:

C. X. It is not permitted to put away one's wife unless consanguinity has been proved before the Church.

We have learned from the report of many that you wish to cast away your own wife and adhere to another, alleging the occasion of consanguinity. Hence, forbidding this by apostolic authority, we command you that you in no way presume to put away the wife whom you now have or to take another until you have examined a just cause before a council of religious bishops.

PART VII. GRATIAN. But one who is to receive back the woman whom he unjustly put away will swear in this manner:

C. XI. The oath of reconciliation.

From this day forward you will keep this spouse N., whom you had unjustly put away, as a husband ought to have his spouse in affection and due discipline. You will not separate her from yourself by any evil device, nor will you take another while she is living. So may God help you.

GRATIAN. But the fact that among certain persons marriages are dissolved by the testimony of one person is held ratified by no reason. For the Lord said, "Every word shall stand in the mouth of two or three witnesses." Likewise, since it is said in the Council of Lérida, [c. 20]: "Every controversy which arises concerning ecclesiastical matters shall be terminated according to divine law under two or three witnesses, as the Lord says: 'Let not one stand against another, but in the mouth of two or three witnesses let every word stand'"; and likewise since it is said elsewhere, "Nothing shall be believed on the testimony of any one person, however practiced": it appears most evidently that marriages are not to be dissolved by the assertion of one person.

Question VII

GRATIAN. But concerning the question whether those born of incestuous unions are reckoned as children, Augustine determines it in the Book of Questions on Leviticus, chapter 77, saying as follows:

C. UN. Those born of incestuous unions are not called children.

What does this mean: "Whoever sleeps with his female blood relative shall die without children," since children both have previously been born from unions of this kind and are born even today? Or must it be understood that this was established by God's law: that whoever are born of them are not reckoned as children and succeed to their parents by no right?

Question VIII

GRATIAN. Concerning those who were unknowingly joined, Gregory defined in the *Register* in what degree of consanguinity or affinity they may be left together by dispensation of the Church, saying:

C. I. Those unknowingly joined within the seventh generation are not to be separated.

Concerning the degrees of kinship: if those who are found in marriage within the seventh generation acted unknowingly, and many courses of years have passed so that they have children, let persons of this kind who are found in the sixth, or perhaps in the fifth, not be separated until, with the Lord's permission, we speak face to face. But I say this according to indulgence, not according to command. Yet those who appear to have contracted new marriages in these two degrees are in every way to be separated within the circle of the year. For the future, let general statutes be confirmed throughout the whole province by proceeding in such a way that no one may dare hereafter to perpetrate such a crime, and that those who do so, punished more severely by penalties and without the mercy of reconsideration, are separated. But those who have joined to themselves in marriage the blood

relatives of their wife, as we wrote to you some time ago, if they are found in the same degree, are to be separated, or let their cause be suspended until, with the Lord's help, we come together.

The same: § 1. Concerning those who, after the death of a wife, wish to contract second marriages, we have justly, honorably, and reasonably provided that they abstain from those women's blood relatives down to the fourth degree of genealogy. We have set forth these things more mildly according to the indulgence of holy mother Church. Yet according to the judgment of the secular laws, all these evil and unlawful things are in every way to be rejected with worthy coercions and grave attacks of discipline, so that all may be at rest in future time.

C. II. Those found joined in the fourth or fifth degree are to be separated.

The same to Felix, Bishop of the city of Messina. We decree that these things are to be guarded against salutarily: no member of the faithful is to desire to join to himself in marriage a person related by his own blood for as long as the lines of affinity are recognized through the succession of the lineage. Rather, just as it was defined by our ancestors, so let it be observed in every way, because we never grant anyone permission to contract a union within the seventh number of kindred, namely, to those who descend by the kindred of consanguinity from father and mother. But let men and women who are found joined in the fourth or fifth degree be separated, because it is written: "No human being shall approach one near to him by blood in order to uncover that person's nakedness"; and again: "The soul that does anything from these things shall perish from the midst of its people." Certainly, those to whom an unlawful union is forbidden will have liberty to enter a better marriage —unless they have contumaciously persevered in the same crime until the death of one of them. Hence in the Council of Orléans:

C. III. One who perseveres in incest until the other's death shall not take a wife.

As long as incestuous persons remain in that detestable and unspeakable crime, let them be regarded not among the Christian faithful but among catechumens or Gentiles; that is, let them take neither food nor drink with Christians, but let them do this alone; let them not be kissed or greeted by them. But if they prove disobedient to their priests and refuse to be separated from so unspeakable a crime and return to public penance, let them be regarded among those who are imperiled by an unclean spirit, or even among those of whom the Truth itself says: "If he does not hear you, let him be to you as a heathen and a publican." And if one of them is overtaken by death, let the other repent gravely for as long as that person lives and remain without hope of marriage.

GRATIAN. By this authority those found joined in the fourth or fifth degree of consanguinity are commanded to be separated by the Church.

Question IX

GRATIAN. PART I. Hence it is asked: if the Church, deceived by the fraud or ignorance of witnesses, separates persons who after the separation contract other marriages, and afterward the witnesses' cunning or false opinion is discovered, are the former marriages to be restored? That this cannot be done is proved by arguments and authority. For a judgment, unless it has been relieved by appeal

within the limit established by law, will obtain irrevocable force. Hence blessed Gregory also writes, saying:

C. I. It is not expedient for things reasonably decided to be changed.

It is fitting in every way for ecclesiastical discipline or moderation that things which have been reasonably ordained or decided ought not afterward to be disturbed by any opposition.

C. II. Things advantageously decided are to be confirmed by successors; things rashly presumed are to be cut away.

Likewise Stephen V to Paul, Bishop of Piacenza. Consideration of our office admonishes us, by the authority of reason, to confirm things advantageously decided by our predecessors and likewise readily to punish things presumed by rash persons. Let one who strives to rescind things advantageously concluded and dares in any way to violate things confirmed know oneself to be guilty before the sight of the divine Judge. For the order of ecclesiastical vigor is confounded if either unlawful things are rashly presumed or unconceded things are attempted with impunity. Therefore, if we negligently disregard things that are evilly usurped, we undoubtedly open a way of transgression to others.

GRATIAN. Therefore, because this judgment was given reasonably and was not relieved by appeal within a fixed limit, it appears that the former marriages are by no means to be restored. To these things the response is as follows: it is one thing to rescind a judgment and disturb things reasonably decided, and another to correct things that occurred by surreption after they have been discovered. For each person is permitted to correct one's own error; and therefore things unlawfully committed by anyone, or found to have been admitted by predecessors, ought to be recalled to a better condition. Moreover, the wife was unlawfully separated from her husband and joined to another while he was living, since the Lord commands that a wife be separated from her husband for the cause of fornication alone. Therefore, just as, if a woman whose husband was thought dead were joined to someone and, when any occasion intervened, withdrew from his fellowship, then, although by the Church's judgment she was compelled to return to the one whom she had left, nevertheless, if after three years the husband who was thought dead happened to return, the former marriage would be restored: so, when persons separated from one another on account of consanguinity are discovered not to have been blood relatives, the bonds of the former fellowship are to be repaired.

PART II. § 1. But that things unlawfully admitted or found to have been admitted are to be corrected, and that even a judgment of the Roman See can be changed for the better, is shown by the authority of Popes Hilary and Nicholas. For Hilary, Bishop of the city of Rome, presiding over a synod, says, [c. 4]:

C. III. What is unlawfully admitted, or is found to have been admitted by predecessors, must be corrected.

Whatever anyone has committed unlawfully, or has found admitted by one's predecessors, one will condemn if one wishes to avoid one's own peril. For we wish to exercise severity of vengeance in no matter; but one who sins in the causes of God either through contumacy or some transgression, or who refuses personally to abolish what is wrongly done, will find in oneself whatever one did not cut away in another. So that this can be observed more tenaciously hereafter, if it pleases you, furnish all

your judgments and your own subscriptions, so that unlawful access may be closed by synodal judgment.

C. IV. An apostolic judgment can be changed according to the tenor of its condition.

Likewise Gregory. A judgment of the Apostolic See is always conceived with such moderation of counsel, matured with such maturity of patience, and delivered with such gravity of deliberation that it does not deem alteration necessary—unless perhaps it was delivered in such a way that it can be reconsidered, or exists as one to be altered according to the tenor of the condition previously stated.

C. V. The Apostolic Church restores persons condemned by predecessors to their former status upon the supplications of others.

Likewise Innocent, [letter XXII to the bishops of Macedonia]. I shall now come to Photinus as to a certain principal theme and—what is anxious and most difficult for me—I shall review the judgments of my predecessors. Something indeed rather grave had been established concerning him in some manner, as you yourselves also remember. But because, as you assert, it is shown that this was surreptitiously obtained from this See through a false rumor and elicited by snares, because the matter has returned to salvation, with you urging us so greatly in this matter we supply pardon after condemnation according to apostolic custom; and we judge it harder than every hard thing not to give assent to such great assertions of yours and to you who are so good and so dear. Therefore, on account of your approval, judgment, and petition, regard Photinus as bishop—it is lawful to establish it as you entreat—and receive for yourselves our judgment changed for the better, sharing in your labor or testimony. But do not expect Eustasius, who has very often been approved by me, to be stripped of the grace of the diaconate. For I willingly hear you when you are solicitous for salvation; on the contrary, even if something is to be done, I do not willingly admit it. To the one to whom you extend a hand, I extend it with you; to the one to whom I extend a hand, extend it with me.

C. VI. A judgment of the Roman See can be changed for the better.

Likewise Pope Nicholas, [to Emperor Michael in letter VII]. We do not deny that a judgment of the Roman See can be changed for the better when either something has been obtained by surreption, or it has itself decreed, by consideration of ages and times or grave necessities, to ordain something dispensatorily—since we read that the eminent Apostle Paul dispensatorily did certain things which he is afterward read to have reproved. Yet this is to be observed when that Church, namely the Roman Church, has chosen with most discerning consideration that this be done, not when it wishes to reconsider things which have been well defined.

C. VII. (VIII.) Persons deposed by predecessors are restored by successors.

Likewise from the *Book of the Pontiffs*. Gregory IV consecrated as bishop of the Church of Segni Theodosius, whom his predecessor Eugenius had deprived of the honor of the priesthood. Leontius was deposed while he was a priest and afterward was patriarch in Antioch. Gelasius, his successor, both restored to communion Misenus the bishop, who had been condemned by Pope Felix, and restored him to his church.

C. VIII. (VII.) The authority of the Apostolic See can reconsider anyone's judgment.

Likewise Innocent to the bishops established throughout Macedonia, [letter VII]. It ought not to have seemed burdensome to your most pious minds to reconsider anyone's judgment, because truth, when more frequently examined, shines forth more brightly into the light, and ruin, when recalled into judgment, is condemned more gravely and without penance. For it is a divine fruit that justice be reviewed more frequently.

[C. IX.]

GRATIAN. Therefore, just as a judgment of the Roman See can be changed for the better, so a judgment of any church, when it is recognized to have been given through surreption, can reasonably be revoked.

Question X

GRATIAN. Concerning a woman who passes to a second marriage, it is rightly asked whether she remains in the same affinity with the blood relatives of her former husband, or whether offspring received from the second marriage can be joined to the blood relatives of the former husband. Gregory writes as follows concerning these matters to Venerius, Bishop of Cagliari:

C. I. Affinity is not erased in the survivor.

Beloved brother, I render the thanks I owe to the diligent sagacity of your fraternity. Because you asked what you ought, you made me joyful. Hence I respond calmly to the matters asked. You resolved to consult the Apostolic See whether a woman joined by the marriage bond to a man who is a stranger pertains to his kin; whether, if he dies, the kinship remains; whether under another husband the names of kinship are dissolved; or whether offspring received can lawfully pass into union with the kin of the former husband.

For the word of God is powerful and strong, durable, persevering, and immutable—not momentary, not transitory. For the Truth itself, who is God and the Word of God, says: "Heaven and earth shall pass away, but my words shall not pass away." Before God appeared in the flesh among human beings, Adam said by his inspiration: "Therefore a man shall leave his father and mother and cleave to his wife, and the two shall be in one flesh." Then, when Truth arose from the earth into the earth and appeared visibly in humanity, he was asked whether it was lawful for a man to leave his wife. Prohibiting this, he forbade it, unless perhaps fornication excluded the marital union. Hence he immediately brought forward the very same sentence which, remaining with the Father before the ages, the Word had inspired in Adam, himself confirming what the first human being himself uttered: "Therefore a man shall leave father and mother and cleave to his wife, and the two shall be in one flesh." If they become one flesh, how can anyone related to one pertain to that one without pertaining to the other? It must be believed that this can by no means occur.

Moreover, when one has died, affinity is not erased in the survivor, nor can another conjugal union dissolve the affinity of the former union. Nor is it pleasing for the offspring of another union to pass into fellowship with the affinity of the former husband, because the word of the Lord is powerful and strong and, as the Prophet said when speaking, "The word of the Lord shall stand forever." And

another Prophet says: "Because he spoke, and they were made; he commanded, and they were created. He established them forever and unto the age of the age; he placed a command, and it shall not pass away." For after the word and command he made two one flesh—that is, male and female—who has not ceased to make the innumerable multitude of either sex one with himself, as the Truth said through himself: "I ask not only for these, but also for those who will believe in me through their word, that they may be one, as you, Father, are in me and I in you, that they too may be one in us."

Therefore, if anyone with sacrilegious and rash daring seeks to extinguish relationship in the deceased, or to dissipate it under the name of another affinity, or believes that offspring received from another union is lawfully joined to the relationship of the former one, that person denies that God's word is powerful and strong; and one who seeks to dissolve it so easily or swiftly does not believe that God's word remains forever.

Mix earth from four places separated from one another by a great interval; when it has been mixed and glued together, fashion a body of whatever shape or size you wish. Will there be any human ingenuity capable of separating those four parts from one another so that each can be recognized by itself? Thus, from four grandparents two are formed into one, and from two one joint creation is made. You can gather this likeness from the four elements from which the human being was jointly created, if you assign each of their kinds—which is divided into many divisions—through parts distinct from one another. The same occurs in metals; this is also proved in liquids; a painter pursues it in colors by the art of mixing colors, fashioning bodies from visible pigments.

C. II. Offspring begotten from a second marriage ought not to be joined to the blood relatives of the former husband.

Likewise Innocent. If anyone's paternal or maternal uncle dies while married, and his wife afterward takes another man and begets sons or daughters by him, we prohibit union with these persons in every way, because man and woman are one flesh.

[C. III.]

Likewise from a Roman Synod. If any woman passes to a second marriage and begets offspring from it, the offspring can in no way enter into union with the kindred of the former husband.

[PALEA.

C. IV. On the same matter.

Likewise Pope Hyginus. If any woman passes to a second marriage and has offspring from it, that offspring cannot join itself to the kindred of the former husband down to the fourth generation.]

[PALEA. Hence Pope Innocent:

C. V. On the same matter.

If any woman passes to a second marriage and begets sons and daughters by the second husband, the holy Roman Synod has altogether prohibited that the daughters ought to be joined to the grandsons of the former husband.]

Causa XXXVI

GRATIAN. A certain man, without her father's knowledge, enticed someone's daughter with gifts and invited her to a banquet. When the banquet had ended, the young man violated the virgin. When this was discovered by her parents, the girl was handed over to the young man, and in the manner of those marrying she was dowered by the young man and publicly taken as wife. (Question I.) It is asked whether he committed ravishment. (Question II.) Second, whether the woman ravished can marry the ravisher when her father furnishes assent.

Question I

GRATIAN. That he committed ravishment is proved by the authority of many. For Isidore says in book II of the *Etymologies*, c. 33:

C. I. What ravishment is.

Ravishment is also unlawful intercourse, so called from corrupting; hence one who gains possession by abduction enjoys defilement. Likewise Pope Gelasius:

C. II. Where ravishment is committed.

That law of former rulers said that ravishment was committed where a girl concerning whose marriage nothing had previously been arranged appears to have been led away.

GRATIAN. Therefore, since she was corrupted by unlawful intercourse and was so led away—that is, led from her father's house—when nothing had previously been arranged concerning her marriage, it cannot be denied that she is to be called ravished. But not every unlawful intercourse, nor the unlawful defloration of any person, is called ravishment. For fornication is one thing, defloration another, adultery another, incest another, and ravishment another.

§ 1. Fornication, although it appears to be the genus of every unlawful intercourse that occurs outside a lawful wife, is nevertheless understood specifically in the use of widows, prostitutes, or concubines.

§ 2. But defloration is properly the unlawful deflowering of virgins: namely, when, no conjugal compact preceding, a virgin is corrupted by the will of both parties, and the father does not immediately take the injury to heart after learning of it.

§ 3. But adultery is violation of another's bed. Hence *adulterium* is so called as though *ad alterius thorum accessio*, "an approach to another's bed."

§ 4. Incest is the abuse of blood relatives or affines. Hence those who abuse their blood relatives or affines are called incestuous.

§ 5. Ravishment is committed when a girl is violently led from her father's house so that she may be possessed as wife after being corrupted, whether it is established that force was inflicted upon the girl alone, upon the parents alone, or upon both. The ravisher is punished by death. But if he flees to a church with the woman ravished, he merits immunity from death through the church's privilege. Hence it is read in the Council of Orléans, [I, c. 4]:

C. III. What ought to be done if a ravisher flees to a church with the woman ravished.

Concerning ravishers, we judged that this must be established: if a ravisher flees to a church with the woman ravished and it is established that the woman herself suffered violence, let her immediately be freed from the ravisher's power; and let the ravisher, after immunity from death or penalties has been granted, either be subjected to servitude or have free power to redeem himself. But if it is established that the woman who is ravished has a father and that the girl consented to the ravisher, let her be excused and returned to her father's power, and let the ravisher be bound to make satisfaction to the father according to the foregoing condition.

GRATIAN. From this authority it is clear that sometimes force is inflicted upon the parents and not upon the girl, when it says, "if the girl consented to the ravisher." Sometimes both suffer violence, when it is stated before: "if a ravisher flees with the woman ravished and it is established that the woman herself suffered violence." But force is inflicted upon the girl and not upon the parents when, by the father's will, the girl is violently led away so that she may suffer the intercourse of one to whose union she never furnished consent. But this man appears to have inflicted force neither upon the parents nor upon the girl, since she was violently led away neither while they prohibited it nor while she resisted. For it is one thing to seduce someone by promises, another to inflict force upon her. Hence, because it is proved that force was inflicted upon neither, this man ought not by law to be called a ravisher.

But plunder is said to occur in two ways: sometimes the thing itself is seized; sometimes only the use of the thing itself is violently taken away. The thing itself is seized when it is violently taken from its owner so that it may be held perpetually; but sometimes the thing itself is not sought, but its use is violently usurped while the owner prohibits it. Therefore, this man committed ravishment because he violently took away the flower of virginity from the resisting girl.

Question II

GRATIAN. PART I. It is now asked whether, after the vice of ravishment has been purged, the ravisher can take the woman ravished as wife. Their union is wholly prohibited by the authority of the holy canons. For it is read in the Council of Chalcedon, c. 27:

C. I. Ravishers of girls and those who consent are to be excommunicated.

The holy synod decreed concerning those who seize girls or women under the pretext of living together, and those who cooperate with or connive at the ravishers, that if they are clerics they shall fall from their own rank; but if laypersons, they shall be anathematized.

C. II. Ravishers of widows or virgins are to be cast out on account of the enormity of the crime.

Likewise Symmachus, [letter to Caesarius, c. 3]. Therefore, we detest ravishers of widows or virgins on account of the enormity of so great a crime, pursuing more vehemently those who attempt to join sacred virgins, whether willing or unwilling, to themselves in marriage. On account of the atrocity of so unspeakable a crime, we command that they be suspended from communion.

[C. III.]

Likewise Emperor Jovian in book I of the Code, title *On Bishops and Clerics*. If anyone has dared—I do not say to seize, but merely to attempt—to join most sacred virgins in marriage, let that person be struck with capital punishment.

C. IV. On the same matter.

Likewise from the Council of Chalon. Concerning girls who have been seized but not yet betrothed, it is written in the Council of Chalcedon: the holy synod decreed concerning those who seize girls under the pretext of living together, and those who cooperate with and connive at ravishers, that if they are clerics they shall fall from their own rank; but if laypersons, they shall be excommunicated. By these words it is given to be understood how the authors of this evil are to be condemned, when participants in the counsel and those who connive are struck by so great an anathema; and according to canonical authority they can in no way lawfully claim for themselves in lawful marriage the woman ravished.

C. V. Ravishers of a widow or virgin are to be excommunicated together with their supporters.

Likewise Gregory, [Pope Gregory II at a Roman Synod]. If anyone seizes a virgin or widow, unless he has betrothed her, or steals her as wife, let him be anathema together with his supporters.

C. VI. One who seizes another's widow or daughter against the parents' will, or seeks her by the king's favor, is to be excommunicated.

Likewise from the Council of Paris, [I, c. 6]. Let no one presume either to seize a widow or another's daughter against the parents' will, or consider that she is to be sought by the king's favor. But if anyone does so, let that person, removed from the communion of the Church, be struck by the sword of anathema.

PART II. GRATIAN. By these authorities it is clearly given to be understood that the ravisher cannot take the woman ravished as wife. But "ravisher" and "woman ravished" are names of vices, not of persons. When vices have been purged through penance, their names are abolished. Hence Gregory says in a certain homily:

[C. VII.]

"For before the almighty Lord, even one who erases the fault of falsehood through penance will not be regarded as deceitful."

GRATIAN. Therefore, by the foregoing authorities the woman ravished is prohibited from being joined to the ravisher before the vice of ravishment is abolished, for as long as he is rightly called a ravisher and she a woman ravished. But when she has been restored to her father's power, the ravisher has performed penance for his ravishment, and the will of the parents of both has come together as one, they are not prohibited from being joined to one another. Hence Jerome says:

C. VIII. How many kinds of lawful marriage there are, and that the woman ravished can marry the ravisher by her father's will.

Three lawful marriages are read of in the Scriptures. The first lawful marriage is a chaste virgin lawfully given to a man in virginity, together with the other things that follow among those stated above. The second is a virgin found by a man in a city and joined to him by force. If her father wills, this man will dower her by as much as the father judges and will give the price of her chastity. The third is the aforesaid daughter when found. If the father's will is lacking, he will draw her away from the aforesaid man, hand her over to another, and dower her, and she will be a lawful wife to him. But the first is preferred to these two.

C. IX. It is permitted to have women who were ravished in marriage with the parents' will.

Likewise Ambrose in the *Apology of David*, [c. 8]. Finally, the father of that girl, betrothed to no one, who suffered the violence of intercourse will receive fifty silver drachmas; but she herself will remain in marriage.

C. X. After penance, lawful marriages are to be conceded to the ravisher and the woman ravished.

Likewise from the Council of Meaux, [c. 65]. But if, when this constitution has been promulgated to everyone, they have not yet taken in marriage with the parents' will under the name of betrothal or dower those women whom they had seized, let them be separated from union with them and subjected to public penance; but let the women ravished be lawfully restored to their parents. When public penance has been completed, if age demands relief from incontinence, let them be joined in a marriage agreed upon by both sides. We do not establish a rule in these matters but—as we may use the words of the great Leo—consider what is more tolerable. But if one of the spouses dies and the one who has completed public penance survives, let that person not presume to repeat marriage unless the bishop has granted some indulgence so that a graver offense can be removed.

GRATIAN. By this authority of the Council of Meaux, the woman ravished is not permitted to be joined to the ravisher after penance; rather, each is permitted after penance to be joined in lawful marriage, so that the woman ravished may marry after penance not the ravisher but another. Similarly, after penance the ravisher is permitted to have as wife not the woman whom he ravished but another. For since the ravisher and the woman ravished are commanded to be subjected to penance, if that authority permitted their union with one another, it would be said in vain near the end of the chapter: "But if one of the spouses dies and the one who has completed public penance survives, let that person not presume to repeat marriage." For whichever of them died, the one who completed penance would remain as survivor. Therefore, by this authority the ravisher is not proved able to take the woman ravished in marriage. Rather, it is found in the Council at Aachen that they cannot be joined to one another even by the will of the parents. For it is read as follows in the aforesaid council:

C. XI. Ravishers cannot have the women ravished as spouses even with the parents' will.

It was resolved that those who seize, steal, or seduce women shall in no way have them as wives, although the women afterward agree with them, or the men have dowered them, or have received

them in marriage with their parents' consent.

GRATIAN. This authority does not prejudice the authority of Jerome, especially since the latter is supported by the testimony of divine law. Therefore, after penance has been completed, the ravisher will lawfully be able to join to himself the woman whom he ravished, unless the girl's father wishes to withdraw her from the ravisher.

[PALEA. Likewise in book V of the Code, title *On Marriages*: The discipline of the laws does not permit even a son under paternal power to be compelled against his will to take a wife. Therefore, as you desire, provided that the precepts of law are observed, you are not prevented from joining in marriage to yourself the woman whom you wish, yet in such a way that your father's consent accedes to the marriage being contracted. Likewise in the same work, [law 20]: In the union of daughters placed under paternal power, let the father's decision be awaited. Likewise in the Digest, *On the Rites of Marriage*, [law 2]: Marriages cannot exist unless all consent, that is, those who come together and those under whose power they are. Likewise in book I of the Institutes, title *On Marriages*: Roman citizens contract lawful marriages among themselves when they come together according to the precepts of the laws—males who have reached puberty and females who are of marriageable age, whether they are heads of households or children under paternal power—provided, however, that children under paternal power possess the consent of the parents under whose power they are. For both civil and natural reason persuade that this ought to be done, to such an extent that the parent's authorization ought to precede.]

Part III: On Consecration (De consecratione)

THIRD PART OF THE DECRETUM: ON CONSECRATION

Distinction I

GRATIAN.

[C. I.]

"That the consecration of churches and celebrations of Masses ought not to take place anywhere other than in places consecrated to the Lord, except under great necessity, is clear to all to whom the precepts of the New and Old Testaments are known."

[C. II.]

"For we read that Moses, at the Lord's command, made and consecrated the tabernacle, together with its table and altar and bronze vessels and utensils for fulfilling divine worship; and we know that he consecrated them not only by divine prayers but also anointed them with the anointing of holy oil, at the Lord's command. But how these things were done, and how none other than priests imbued with sacred anointing and consecrated to the Lord together with holy vestments, and the Levites, handled, carried, erected, and took down the sacred things themselves, is found in the law of the Lord, in the very ordinances that were written through Moses at the Lord's command. How, therefore, David, the most devout of kings, enlarged the worship of God and wished to build the temple of the Lord, but was prohibited because of the great quantity of blood that he had shed, and how he himself had gathered the expenses; and how Solomon his son, at the Lord's command and with his assistance, completed what David himself had desired to do, and consecrated the temple with the altar and the other things for carrying out divine worship, is read in the Book of Kings.

§ 1. Therefore at that time Solomon held a celebrated festivity, and all Israel with him, a great multitude from the entrance of Hamath to the brook of Egypt, before the Lord our God for seven days and seven days, that is, fourteen days; and on the eighth day he dismissed the peoples.

§ 2. Therefore the Jews held the places in which they sacrificed to the Lord to have been consecrated by divine supplications, nor did they offer gifts to the Lord in places other than those dedicated to God. For if the Jews, who served the shadow of the law, did these things, much more ought we—to whom the truth has been disclosed, and grace and truth have been given through Jesus—to build temples to the Lord and adorn them as well as we can; devoutly and solemnly to consecrate them by divine prayers and holy anointings, together with their altars and vessels, vestments also, and the remaining utensils for fulfilling divine worship; and to celebrate Masses and offer sacrifices to the Lord in none other than places consecrated to the Lord by bishops and not by chorepiscopi—who have often been prohibited from doing so—unless, as was said before, the highest necessity requires it. And if the highest necessity compels this to be done, offerings are not prohibited from being made in houses.

§ 3. But if, as is read in chapter 27 of the Council of Laodicea, those who have not been ordained by bishops cannot exorcize either in churches or in houses, much more ought the ministries of a higher grade not to be performed, nor offices carried out or sacrifices offered, except by those who have been consecrated to the grades whose functions they ought to exercise. But that offerings ought not to be made in houses, as was touched upon a little above, is held to be prohibited in chapter 59 of the same council thus: 'Offerings ought not to be celebrated in houses by bishops or presbyters.'"

C. III. The consecration of churches ought not to take place without a Mass.

Likewise Pope Hyginus, c. 5. PART II. All basilicas must always be consecrated with a Mass.

§ 1. And as for ruined churches, where there are more than are necessary, or they are of greater size than can be restored from the things belonging to them, let a measure be found by the bishop's providence whereby they can subsist.

C. IV. A new church shall not be dedicated without a precept of the apostolic see.

Gelasius, c. 34. PART III. Concerning the consecration of places, although it was briefly embraced above, it has also been disclosed to me that some presume to consecrate churches or oratories that have been made without a precept of the apostolic see.

C. V. A new church shall not be dedicated without the authority of the Supreme Pontiff.

The same. The synodal precepts that were directed from our see to the province a few months ago both agree with the ancient canons, and we have added those things that are proved to be lacking; and it is established in both respects that a newly founded church cannot be dedicated without the authority of the Supreme Pontiff. We reasonably judge that you suspended Masses from this basilica, which had been brought into use for a procession in such a way. But because a devoted place ought not long to remain empty of the grace of the ministries, dearest brother, having received the tenor of our authority, you shall consecrate it in the name of those martyrs whom the report contains, so that the gathering of the peoples whom you directed eagerly to assemble there may, with the ecclesiastical rules and canons preserved, have an unimpaired assembly secured by religion.

C. VI. Basilicas that have been built without the authority of the apostolic see shall not be dedicated.

The same, [to the Bishops throughout Lucania, c. 6]. Let no one dare to dedicate newly established basilicas without the customary precepts having been sought, nor let bishops strive to claim for themselves clerics belonging to another's authority.

[And c. 11.] § 1. For since we too strive greatly to guard the decrees of venerable sanctions, and believe that even those things which may perhaps seem capable of being relaxed for the advantage of some utility ought to be relaxed without injury to them; and since we desire to say nothing rashly against reverence for the salutary rules; and since the apostolic see, by the Lord's favor, endeavors with a devout and pious purpose to hold above all those things that have been prescribed by the paternal canons: it is quite unworthy for anyone, either of the pontiffs or of the orders that follow, to

reject this observance which he sees the see of blessed Peter both follow and teach. And it is quite fitting that the whole body of the Church agree with itself in that observance which it sees flourishing there where the Lord placed the primacy of the whole Church.

C. VII. Public processions shall not take place in oratories that are consecrated without the authority of the apostolic see.

The same to John, Bishop of Sora. It is indeed certain that it was established by our precepts that no one should think a public procession was to be held in a church or oratory that is not recorded as having been dedicated with the permission of our see, lest founders leap beyond the statutes of the rules by furtive subreptions. But because Megetia, an illustrious woman, suggested to us by the presentation of a petition that she had buried the little bodies of her people in her own possessions, dearest brother, from a regard for humanity you are to know that ministries are to be furnished for the solemnity only in the places embraced in the petition—which does not stain the former statutes by funerals and tombs—so that the divine offices may be celebrated solely in the name of the deceased, with public attendance and procession ceasing.

C. VIII. A church ought not to be established without the assent of the apostolic see.

Likewise Pope Nicholas to the Clergy and People of the Church of Nona. How will the Church, that is, the gathering of Catholics, be established without the assent of the apostolic see, when according to the sacred decrees not even the newly constructed basilica, which is known to embrace within itself that very multitude of Catholics, ought to be built without a precept of the Pope?

C. IX. A church shall not be built without the bishop's designation.

Likewise from the Council of Orléans. PART IV. Let no one build a church before the bishop of the city comes, fixes a cross there, publicly marks out the atrium, and, beforehand, the one who wishes to build specifies what things will suffice for lights, maintenance, and the stipends of the keepers; and after showing the donation, let him thus build the house, and after it has been consecrated, let him sprinkle the atrium of that church with holy water.

C. X. A church that is built for the profit of greed shall not be consecrated.

Likewise from the Council of Braga, [II, c. 6]. If anyone builds a basilica not from devotion of faith but for the profit of greed, so that he may divide with the clerics half of whatever is collected from the offering of the people because he founded the basilica on his own land, this ought henceforth to be observed: that none of the bishops consent to so abominable a vow, nor dare to consecrate a basilica that was founded not for the patronage of the saints but rather under a tributary condition.

C. XI. Sacrifices shall be offered only upon an altar and in places consecrated to God.

Likewise Bishop Felix to all the orthodox, [letter I]. PART V. Just as none other than priests consecrated to the Lord ought to celebrate Masses or offer sacrifices upon the altar, so it is not permitted to sing Masses or offer sacrifices in places other than those consecrated to the Lord, that is, in tabernacles dedicated by pontiffs with divine prayers, unless the highest necessity compels it. It is

therefore more satisfactory not to sing or hear Mass than to do so in those places where it ought not to take place, unless it happens because of the highest necessity, since necessity has no law. Hence it is written: "See that you do not offer your holocausts in every place that you see, but in every place that the Lord your God shall choose." Nevertheless, it is in no way permitted for offerings to be celebrated in houses by bishops or presbyters.

C. XII. The solemnities of Masses shall be celebrated only in consecrated places.

Likewise from the Council of Tribur. We judge that the solemnities of Masses are to be celebrated not everywhere, but in places consecrated by the bishop or where he has permitted it.

C. XIII. Churches shall be consecrated by divine prayers.

Likewise Clement, [letter II to James]. Construct churches in suitable and useful places, which ought to be consecrated by divine prayers and burdened by no one.

C. XIV. It is not permitted to sacrifice and celebrate Masses except in consecrated places.

The same. Here, therefore, that is, while placed in the present life, you ought to recognize the will of God, where there is a place both for acting and for sacrificing, since in other places it is not permitted to sacrifice and celebrate Masses, except in those in which the bishop has commanded, or which have been consecrated by a regularly ordained bishop, one who, namely, holds a city. For otherwise these things are not to be done or rightly celebrated. Likewise Pope Sylvester, [presiding in a general synod, said]:

C. XV. A priest who presumes to celebrate Masses in unconsecrated places shall be cast out.

Let no presbyter presume to celebrate Masses except in places consecrated by the bishop, if he wishes henceforth to be a participant in his priesthood.

C. XVI. The solemnities of dedications shall be celebrated every year, and a church about whose consecration there is doubt shall also be consecrated.

Likewise Pope Felix to all the orthodox, [letter I, cc. 1 and 2]. PART VI. The solemnities of the dedications of churches and of priests are to be celebrated in each year.

§ 1. Concerning the consecrations of churches, whenever doubt exists, so that neither a certain writing nor witnesses exist from whom the consecration may be known, know without any doubt that they are to be consecrated; nor does such trepidation create a repetition, since that which is not known to have been done is not shown to have been repeated.

C. XVII. On the same matter, and that the solemnity of dedications is to be celebrated for eight days.

Likewise Gregory. The solemnities of the dedications of churches are solemnly to be celebrated in each year, with the Lord himself giving an example, who, giving everyone a form for doing this, came with the rest of the peoples to celebrate that same festivity at the feast of the dedication of the

temple, as it is written: "The feast of the dedication took place at Jerusalem, and it was winter, and Jesus walked in the temple in Solomon's porch." But that the dedication feast is to be celebrated for eight days you will find in the Book of Kings, when the dedication of the temple has been read through.

C. XVIII. Churches about whose consecration there is doubt shall be consecrated.

Likewise from the Council of Meaux, c. 8. PART VII. Churches or altars that are of doubtful consecration shall be consecrated, and superfluous altars shall be destroyed.

C. XIX. When a church is to be consecrated anew, and when it is only to be exorcized with salts.

Likewise Pope Hyginus. If the altar has been moved, let the church be consecrated anew; if the walls are changed but not the altar, let it only be exorcized with salts.

§ 1. If a church has been violated by homicide or adultery, let it be most diligently purified and consecrated anew.

C. XX. When a church once consecrated to God is to be consecrated again.

Likewise from the Council of Nicaea. Consecration ought not to be applied again to churches once consecrated to God, unless they have been either consumed by fire, polluted by the shedding of blood, or polluted by someone's semen; because just as an infant, once baptized by any priest in the name of the Father and of the Son and of the Holy Spirit, ought not to be baptized again, so neither is a place dedicated to God to be consecrated again, except for those causes that we named above—provided, however, that those who consecrated it held the faith of the Holy Trinity.

C. XXI. On the same matter.

Likewise Pope John, [to the Bishops of Italy]. Wherever you find churches of the Arians, consecrate them as Catholic by divine prayers and works without any delay, just as we too did when we were at Constantinople on account of King Theodoric's affair.

C. XXII. On the same matter.

Likewise Gregory in the *Dialogues*, [book III, c. 30]. When a church of the Arians in the region of this city called Subura had remained closed for as long as two years, it was resolved that it ought to be dedicated in the Catholic faith, with relics of blessed Sebastian and of the martyr Saint Agatha brought in there; and this was done.

C. XXIII. On the same matter.

Pope Agapetus, a Catholic vessel, trumpet of the Gospel, herald of justice, cleansed by his Catholic prayers the sacred coverings of the altar and see that had been infected by the sacrilegious fables of Anthimus.

C. XXIV. On the same matter.

Likewise Pope Julius, [letter I to Eutherius, c. 4]. Concerning the fabric of any church that is to be restored if it has fallen into ruin, and whether the solemnity of consecration ought to be repeated in that place in which there were no sacred relics, we judge that nothing hinders this if exorcized water is by no means sprinkled through it, because we know that the consecration of any church in which an altar of the Holy Spirit is not set up is only the celebration of Masses. And therefore, if any basilica of the saints has been renewed even from its foundations without movement of the altar, without any doubt, when the solemnity of Masses has been celebrated in it, the consecration of the whole sanctification will be completed. But if the sacred relics that it had have been removed, it will again receive the reverence of sanctification by their deposition and by the solemnity of Masses.

C. XXV. Without the bishop's permission an altar shall not be erected in a consecrated church.

Likewise from the Decrees of Pope Hormisdas, c. 10. PART VIII. Let no presbyter erect another altar in a consecrated church unless it has been sanctified or permitted by the bishop of the place, so that there may be a distinction between sacred and not sacred; nor let him feign a dedication unless there is one. But if he has done so, let him be degraded if he is a cleric; if a layman, let him be anathematized.

C. XXVI. Altars erected without relics of saints shall be overturned.

Likewise from the African Council, c. 50. It was resolved that altars which are erected here and there throughout the fields and villages as memorials of martyrs, in which no body or relics of a martyr are proved to have been buried, are to be overturned, if it can be done, by the bishops who preside over those places. But if this is not allowed because of popular disturbances, let the peoples be admonished not to frequent those places, so that those who think rightly may not be held overcome there by any superstition. And let no memorial of martyrs whatsoever be accepted as genuine unless either a body or certain relics are there, or unless the origin of someone's habitation, possession, or passion is handed down by a most trustworthy origin. For altars that are erected anywhere through dreams and through the empty, supposed revelations of any persons are to be rejected in every way.

C. XXVII. A church in which a pagan is found buried is not to be consecrated.

Likewise from the Council of Orléans, c. 3. It is not permitted to consecrate a church where a pagan is buried, nor to celebrate Masses in it; rather, it is necessary to cast him outside and for the church to be cleansed.

C. XXVIII. Concerning a church in which the corpses of the faithful or of unbelievers are buried.

Likewise from the Council of Cologne. It is not permitted to sanctify a church in which corpses of unbelieving dead persons are buried; but if it seems fit to be consecrated, after the bodies have been dug out from it and the walls or timbers of that place have been scraped, let it be rebuilt. But if it was previously consecrated, it is permitted to celebrate Masses in it, provided, however, that those who were buried in it were faithful.

C. XXIX. The sacred mysteries shall not be distributed over tombs in the field.

Likewise from the Council of Pope Martin, [Council of Braga, cc. 68 and 69; Greek synods]. Ignorant and presumptuous clerics ought not to carry ministries to tombs in the field or distribute sacraments there, but either in a church or in a basilica where relics of martyrs have been deposited, where offerings are customarily offered for the deceased.

§ 1. Nor is it permitted for Christians to carry meals to the tombs of the deceased and sacrifice to the dead.

C. XXX. How Mass can be celebrated in a burned church.

Likewise from the Council of Tribur. We also concede that, wherever churches have been set on fire and burned by the Normans and Slavs, by the Hungarians and evil Christians, or in any other manner —as, by the exaction of our sins, has happened very often—we permit Masses meanwhile to be celebrated in chapels with a consecrated tablet, until the churches themselves can be restored. But for those situated on a journey, if a church is lacking, we permit the solemnities of Masses to be celebrated in the open air or in tents, if likewise a consecrated altar-tablet and the other sacred mysteries pertaining to that office are present there.

C. XXXI. Altars shall not be anointed with chrism unless they are of stone.

Likewise from the Council of Epaon, c. 6. If altars are not of stone, let them not be consecrated by anointing with chrism. But for celebrating the divine offices, their comprovincials will have to observe the order that the metropolitans observe.

C. XXXII. Altars shall be consecrated by anointing with chrism and priestly blessing.

Likewise from the Council of Agde, [c. 14]. It was resolved that altars are to be consecrated not only by anointing with chrism but also by priestly blessing.

C. XXXIII. It is permitted to pray in private oratories, but not to celebrate Masses.

Likewise from the Council of Orléans, c. 3. It is permitted for each of the faithful to have an oratory in his own house and to pray there; but it is not permitted to celebrate Masses there.

C. XXXIV. No one shall presume to minister in private oratories without the bishop's consent.

Likewise from the Sixth Synod, [c. 31]. We command that clerics who minister in oratories that are within houses do this with the consent of the bishop of that place. But if anyone does not observe this, let him be deposed.

C. XXXV. Those who have oratories outside the parishes shall be compelled on these days to return to the parishes.

Likewise from the Council of Agde, [c. 21]. If anyone wishes to have an oratory even outside the parishes in which there is a lawful and regular assembly, on the other feast days we permit in due

order that he hear Masses there on account of the weariness of the household. But at Easter, the Nativity of the Lord, Epiphany, the Ascension of the Lord, Pentecost, and the Nativity of Saint John the Baptist, and on whatever days are held to be greatest among the feasts, let them hear Masses only in cities or parishes. But if any clerics wish to celebrate Masses in oratories on these feasts that we mentioned above, without the bishop commanding or permitting it, let them be driven from communion.

C. XXXVI. For what causes the places of saints are to be changed.

Likewise Augustine. PART IX. The places of saints are to be moved for three causes. The first is when the necessity created by persecutors has burdened their places. The second, when there has been difficulty of the places. The third, when they are burdened by the society of evil persons.

C. XXXVII. When it is not permitted for anyone to transfer the bodies of saints from place to place.

Likewise from the Council of Mainz, [I], c. 51. Let no one presume to transfer bodies of saints from place to place without the counsel of the prince or permission of the bishops and holy synod.

C. XXXVIII. The timbers of a dedicated church may not be converted to the use of laypersons.

Likewise Pope Hyginus. PART X. The timbers of a dedicated church ought not to be joined to another work, except to another church, or to be burned by fire, or for the benefit of the brothers in a monastery; they ought not to be admitted to the works of laypersons.

C. XXXIX. Sacred vestments and vessels consumed by age shall be burned, and their ashes cast into hidden places.

Likewise Clement to James, Bishop of Jerusalem, [letter II]. If an altar cloth, chair, candlestick, or veil has been consumed by age, let it be given to fire, since it is not permitted that things which were in the sacristy be treated badly; rather, let all be handed over to fire. Let their ashes also be brought into the baptistery, where no one has passage, or cast into the wall or into hollows in the pavement, lest they be defiled by the feet of those entering.

C. XL. The dead shall not be wrapped in altar vestments.

The same. Let no cleric through ignorance think that a dead person is to be wrapped in, or wish to cover his shoulders with, a cloth that was upon the altar, or certainly one that was given to the deacon at the Lord's table. A deacon who has done this, or has regarded it lightly, as nothing, and negligently, shall be removed from the Lord's altar for three years and six months, struck by a grave anathema. Because the presbyter did not admonish the cleric, let him be excommunicated for ten years and five months, because he did not admonish the ministries subject to him concerning the Lord's sacraments; and afterward let him be reconciled to mother Church with great humility.

§ 1. But let the deacons, with the inferior ministers, wash within the sanctuary the altar cloths and veils that have been soiled in the sanctuary, as well as the sacred implements and the coverings of the Lord's table, lest perhaps dust of the Lord's body fall away improperly. But let them not wash the linen cloth outside, and it will be a sin for one who does not do this. Therefore we command that it be guarded diligently by the ministers within the sacristy. But if a new basin is procured, let nothing

else besides this touch it. Nor let that basin itself be applied to washing any veils except those that pertain to the service of the Lord's altar; let the altar cloths be washed in one basin and the door veils in another.

§ 2. Let care also be taken by the doorkeepers, at the admonition of their superior, lest any negligent or ignorant person wipe his unclean hands on the veil of the door of the Lord's house; but let every person, immediately restrained, learn that it is the veil of the court of the Lord's house.

C. XLI. Sacred vessels shall be handled only by consecrated persons.

Likewise Sixtus, [letter II]. It was established in the holy apostolic see that sacred vessels are to be handled by none other than persons consecrated and dedicated to the Lord, lest the Lord, angered by such presumptions, lay a plague upon his people and even those who did not sin perish, because the righteous person very often perishes for the impious.

C. XLII. Sacred vestments shall be carried only by consecrated persons.

Likewise Bishop Stephen to his familiar friend Hilary, [letter I, c. 5]. The vestments of the Church with which service is rendered to the Lord ought to be both sacred and honorable, and they ought not to be used for purposes other than ecclesiastical offices worthy of God; nor ought they to be touched or carried by any except consecrated persons, lest the vengeance that struck King Belshazzar come upon those who transgress in this matter and cause them to fall to the depths.

C. XLIII. Divine mysteries shall not be furnished for the ornaments of weddings.

Likewise from the Council of Orléans. Let divine mysteries not be furnished as wedding ornamentation, lest, while they are polluted by the touch of the wicked or by the display of secular luxury, they seem unworthy for the office of the sacred mystery.

C. XLIV. The sacraments of the Lord's body and blood are not to be confected in little wooden vessels.

Likewise from the Council of Tribur, c. 9. PART XI. The vessels in which the most sacred mysteries are confected are chalices and patens. When Boniface, martyr and bishop, was asked concerning these whether it was permitted to confect the sacraments in little wooden vessels, he responded: Formerly priests used not golden but wooden chalices. Zephyrinus, the sixteenth Roman bishop, established that Masses be celebrated with glass patens. Then Urban, the tenth Pope, made all the sacred implements of silver. For in this, as also in the remaining forms of worship, the splendor of churches grew more and more through the progress of time. For in our days, we who are servants of the master of the household, lest the splendor of mother Church be diminished, but rather accumulated and enlarged, establish that henceforth no priest presume in any manner to confect the sacred mystery of the body and blood of our Lord Jesus Christ in little wooden vessels, lest God be angered by that through which he ought to be appeased.

C. XLV. From what material a chalice with its paten ought to be made.

Likewise from the Council of Reims, c. 6. Let the chalice of the Lord with its paten, if not of gold, be made wholly of silver.

§ 1. But if anyone is so poor, let him at least have a tin chalice.

§ 2. But let it not be made of bronze or brass, because by the strength of the wine it produces verdigris and likewise vomiting.

§ 3. But let no one presume to sing Mass in a wooden or glass chalice.

C. XLVI. The sacrifice of the altar shall be consecrated not on silk but on pure linen.

Likewise from the letter of Popes Eusebius and Sylvester. By the counsel of all we establish that no one presume to celebrate Mass with the sacrifice of the altar on a silk or dyed cloth, but on pure linen consecrated by the bishop, namely linen produced from the earth and woven, just as the body of our Lord Jesus Christ was buried in a clean linen shroud.

C. XLVII. By whom the celebration of Masses was handed down.

Likewise from the Sixth Synod, [c. 32]. PART XII. James, brother of the Lord according to the flesh, to whom the church of Jerusalem was first entrusted, and Basil, Bishop of Caesarea, whose renown shone throughout the whole world, added for us in writings the celebration of the Mass.

C. XLVIII. At what hour the solemnities of Masses are to be celebrated.

Likewise Pope Telesphorus, seventh from Peter, [in his letter to all, c. 2]. PART XIII. On the holy night of the Nativity of the Lord and Savior, let presbyters celebrate Masses and solemnly chant the angelic hymn in them, since on that same night it was also announced to the shepherds by an angel.

§ 1. "And suddenly there was with the angel a multitude of the heavenly host praising God and saying: 'Glory to God in the highest, and on earth peace to persons of good will.'" But at other times celebrations of Masses are by no means to be celebrated before the third hour of the day, because at that same hour both the Lord was crucified and the Holy Spirit is read to have descended upon the Apostles.

C. XLIX. The sacraments of the altar shall be celebrated only by persons who are fasting.

Likewise from the Council of Carthage, c. 8. PART XIV. The sacraments of the altar are to be celebrated only by persons who are fasting, except on the one anniversary day on which the Supper of the Lord is celebrated. For if the commemoration of any deceased persons, whether bishops or others, is to be made in the afternoon, let it be done by prayers alone if those who perform it are found already to have eaten.

C. L. In Lent no one is permitted to eat before the solemnities of Masses, chanted around the ninth hour.

Likewise from the Council of Chalon. PART XV. Many who think themselves to be fasting in Lent are accustomed to eat as soon as they have heard the signal for the ninth hour. They are in no way to be believed to be fasting if they eat before the evening office is celebrated. For one must gather for Mass, and after the solemnities of Masses and evening offices have been heard and alms given, one must approach food. But if anyone has been constrained by necessity so that he cannot come to Mass, after estimating the evening hour and completing his prayer, let him break his fast.

PART XVI. GRATIAN. At the fasts of the four seasons, too, the solemnities of Masses are to be celebrated around the evening hours, but on Holy Saturday around the beginning of night. Hence Bishop Leo: "What by our Fathers." Likewise Gelasius: "The ordinations of presbyters." Likewise Pelagius: "The rescript of your affection." Seek these in the treatise on those to be ordained. In the first part of the day also the solemnities of Masses are not unfittingly celebrated. Hence Pope Leo to Dioscorus, Bishop of Alexandria, [letter LXXIX, otherwise LXXXI, c. 2]:

C. LI. It is permitted to celebrate Masses even in the first part of the day.

But it is necessary that some part of the people be deprived of its devotion if, with the custom of only one Mass being observed, they cannot offer the sacrifice unless they have assembled in the first part of the day. Therefore we earnestly admonish your fraternity with familiarity that your care not neglect what has become settled in our custom from the form of paternal tradition, so that in all things we may agree in faith and actions. For this reason we gave our son Possidonius the presbyter, as he returned, this letter to carry to your affection; he frequently took part in our processions and actions and, having been sent to us so many times, learned what the authority of the apostolic see held in all matters.

C. LII. Private Masses are not to be sung in public.

Likewise Augustine. And this is to be attended to: that private Masses which are held for priests on solemn days are not to be held in public in such a way that through them the people are drawn away from the public solemnities of Masses, which canonically take place at the third hour.

§ 1. But let the priests who are around the city or in that same city, and the people, assemble as one for the public celebration of Masses.

C. LIII. How many Masses priests are permitted to celebrate in a day.

Likewise Pope Alexander. PART XVII. It is enough for a priest to celebrate one Mass on one day, because Christ suffered once and redeemed the whole world. It is no small thing to perform one Mass, and very happy is he who can celebrate one worthily. Some, however, perform one for the deceased and another for the day, if it is necessary. But those who, for money or the flatteries of secular persons, presume to perform several Masses in one day, I do not judge to escape damnation.

C. LIV. We are taught by the example of the Savior and the Apostles to sing hymns.

Likewise from the Third Council of Toledo, [c. 12]. PART XVIII. For singing hymns we have the example both of the Savior and of the Apostles. For the Lord himself is also reported to have said a hymn, as the evangelist Matthew testifies: "And when a hymn had been said, they went out to the Mount of Olives." And the Apostle Paul writes to the Ephesians, saying: "Be filled with the Spirit, speaking among yourselves in psalms and hymns and spiritual songs." And because some hymns are known to have been composed by human endeavor in praise of God and of the triumphs of the Apostles and martyrs—such as those which the most blessed doctors Hilary and Ambrose produced, but which some specially reject because they do not exist from the Scriptures of the holy canons or apostolic tradition—let them therefore also spurn that hymn composed by human beings which we say daily in public and private office at the end of all the psalms: "Glory and honor to the Father and

to the Son and to the Holy Spirit for ages of ages. Amen." For that hymn too which the angels sang when Christ was born in the flesh—"Glory to God in the highest, and on earth peace to persons of good will"—and the rest that follow there, ecclesiastical doctors composed. Therefore, are not even these to be sung in churches because they are not found in the books of the holy Scriptures? Masses are composed, whether prayers or orations, commendations or impositions of hands; and if none of them is chanted in the church, all ecclesiastical offices are empty. The Apostle admonishes and exhorts Timothy that this be done, saying: "I therefore entreat first of all that supplications, prayers, petitions, and thanksgivings be made for all persons, for kings, and for all who are in high station." Therefore, just as prayers, so let none of us further condemn hymns composed in praise of God.

C. LV. What hymns are found to have been chanted by angels in the New Testament.

Leo IX. These two hymns alone are found to have been chanted by angels in the New Testament: "Alleluia" and "Glory to God in the highest." We omit them both in Septuagesima because, expelled through the sin of the old man from the assembly of angelic jubilation into the Babylon of this wretched life, we sit by its rivers and weep while we remember that Zion in which a hymn befits God. That we omit the Alleluia for nine weeks is not unfittingly understood through nine weeks as the nine orders of angels, whose tenth order, falling through pride, diminished the angelic number and disturbed its felicity. Grieving for their diminution and fearing an equal fall for themselves, they were hindered from the perfect praise of the Creator. Counseling for their recovery and consolation, almighty God the Creator formed the first human being from the slime of the earth, who would repair by the multiplication of his race the losses of the heavenly homeland and supply the joys of the angels. The angelic choir, somewhat gladdened by this hope, was unsurprisingly disturbed by the fall of that very human being. Hence the harmony of the nine orders remained imperfect in the praise of the Creator until, with Christ rising, that fallen first-formed man rose. There the angelic host, rejoicing at the increase of its company and in a better hope, rose entire into a new Alleluia and persists devoutly in it. Imitating it according to our measure, we omit the Alleluia for nine weeks from Septuagesima, when the fall of the first-formed man is recited in the church, namely until Easter, where Christ, rising from the dead, turns our sorrow into joy and restores the Alleluia to us.

C. LVI. At the Supper of the Lord, *Gloria in excelsis* shall be chanted.

Nicholas to Ralph, Archbishop of Bourges. Further, *Gloria in excelsis Deo* is to be said by bishops according to our custom among the solemnities of Masses on the Supper of the Lord. But on that day it is permitted to use the apostolic pallium for those to whom this has been permitted by the apostolic see.

C. LVII. A cleric shall not enter to celebrate the solemnities of Masses with a staff or with covered head.

Pope Zachary, [at the Roman Synod, cc. 13 and 14]. PART XIX. Let no bishop, presbyter, or deacon presume to enter with a staff to celebrate the solemnities of Masses or to stand at the altar of God with covered head, since the Apostle also prohibits men from praying in church with covered head; and if he has rashly presumed to do so, let him be deprived of communion. But when a bishop or presbyter has entered to celebrate the solemnities of Masses, unless some affliction intervenes, let him in no way dare to withdraw after the prayer has been given so that the solemnities of Masses

may be completed by another bishop or presbyter; rather, let the one who makes the beginning complete it to the end. But if anyone has presumed to act otherwise than we have set down, let him be suspended from the sacred body and blood of our Lord Jesus Christ.

[PALEA. C. LVIII.

Likewise from the Decrees of Pope Soter. So that individuals may guard carefully against that divine oracle in which it is written, "Woe to one alone, because when he falls, he has no one to raise him," we must greatly fear and guard lest, in those hours and times in which psalmody or sacrifice is offered to God, a harmful seizure or some infirmity of body befall anyone attending the divine offices alone, which may either cause the body suddenly to collapse or confuse the mind by derangement or terror. Therefore, taking precautions for cases of this kind, we have deemed it necessary to establish that, where an abundance of time, place, or clergy affords support, each person singing and sacrificing to God shall have behind him a helper providing nearby aid, so that if by some chance the one who approaches to complete the offices has been disturbed or dashed to the ground, he may always have behind him someone who intrepidly performs his duty and completes the office begun.]

C. LIX. How many witnesses a sacrificing bishop ought to have with him.

Anacletus, servant of Christ Jesus, to all Bishops, [letter I]. PART XX. Let a bishop sacrificing to God have witnesses with him. On more solemn days, indeed, let him have with him either seven, five, or three deacons, who are called his eyes, and subdeacons and the remaining ministers, who, clothed in sacred vestments, shall stand in front and behind, while presbyters stand opposite at right and left, with contrite heart, humbled spirit, and face inclined, guarding him from malicious persons and giving consent to the sacrifice. But when the consecration has been completed, let all communicate who do not wish to be deprived of the thresholds of the Church.

C. LX. Bishops shall not confect the Lord's sacraments without religious witnesses.

Likewise Pope Lucius to all Bishops. By apostolic authority we command that you always have priests and Levites as witnesses with you. And although one's own conscience can suffice, nevertheless, because of malicious persons, according to the Apostle, you must also have good testimony from those who are outside. Therefore, let two presbyters and three deacons in every place not leave a bishop, for the sake of ecclesiastical testimony.

C. LXI. A presbyter shall not presume to celebrate Mass unless two are present.

Likewise Pope Soter. This also was established: that no presbyter presume to celebrate the solemnities of Masses unless, with two present and responding to him, he is counted as the third; because, when he says in the plural, "The Lord be with you," and in the secrets, "Pray for me," it is most fitting that a response be made to his salutation.

C. LXII. Those who do not hear the solemnities of Masses through to the end shall be deprived of communion.

Likewise from the Canon of the Apostles, [10]. PART XXI. Let all the faithful who assemble in church for the sacred solemnities also hear the Scriptures of the Apostles and the Gospel. But those

who do not persevere in prayer until the Mass is completed, nor receive holy communion, ought to be deprived of communion, as persons stirring up disturbances in the Church.

C. LXIII. On the same matter.

Likewise from the Fourth Council of Carthage, [c. 24]. When the priest is delivering the word in the church, whoever goes out from the audience shall be excommunicated.

C. LXIV. Secular persons ought to hear Masses in their entirety on the Lord's day.

Likewise from the Council of Agde, [c. 47]. By a special order we command secular persons to hear Masses in their entirety on the Lord's day, so that the people shall not presume to depart before the priest's blessing. But if they do so, let them be publicly confounded by the bishop.

C. LXV. The people shall not depart before Mass is celebrated in its entirety.

Likewise from the Council of Orléans, [I, c. 28]. When the people assemble in the name of God to celebrate Masses, let them not depart before the solemnity of the Mass is completed; and where there is no bishop, let them receive the priest's blessing.

C. LXVI. One who goes to spectacles after neglecting the assembly of the Church shall be excommunicated.

Likewise from the Fourth Council of Carthage, [c. 88]. One who goes to spectacles on a solemn day after neglecting the assembly of the Church shall be excommunicated.

C. LXVII. No one shall be prohibited from entering the church up to the Mass of the catechumens.

Likewise from the Fourth Council of Carthage, [c. 84]. PART XXII. Let a bishop prohibit no one from entering the church and hearing the word of God, whether gentile, heretic, or Jew, up to the Mass of the catechumens.

C. LXVIII. We ought to hear the Gospels not sitting but standing.

Likewise Bishop Anastasius to all Bishops, [letter I, c. 1]. PART XXIII. By apostolic authority we command that, while the holy Gospels are read in church, priests and all the others, not sitting but reverently bowed and standing in the sight of the Gospel, intently hear and faithfully adore the Lord's words.

C. LXIX. Something is always to be offered at the solemnities of Masses.

Likewise Gregory VII, [at the Roman Synod held in the year of the Lord 1078, c. 13]. PART XXIV. Let every Christian take care to offer something to God at the solemnities of Masses, and call to memory what God said through Moses: "You shall not appear in my sight empty." And in the collections of the holy Fathers it clearly appears that all Christians ought, according to the usage of the holy Fathers, to offer something to God. For recourse must first be had to him who can heal the sufferings of our soul. But in a perverse order, human beings first summon aid for themselves from human

beings. But when human supports have failed, they then think that the grace of divine favor is to be sought.

C. LXX. Why "Lift up your hearts" is said in the preface.

Likewise Cyprian, [sermon VI on the Lord's Prayer]. PART XXV. But when we stand for prayer, dearest brothers, we ought to be watchful and apply ourselves to prayers with the whole heart. Let the thought of the carnal and secular person depart, nor then let the mind think anything except that alone which it prays. Therefore the priest too, before the prayer, prepares the minds of the brothers by a preface sent before, saying, "Lift up your hearts," so that when the people respond, "We have them toward the Lord," they may be admonished that they ought to think of nothing except the Lord. Let the breast be closed against the adversary and lie open to God alone, nor let it suffer the enemy of God to come to it at the time of prayer.

C. LXXI. Which prefaces are to be sung in the Mass.

Pelagius, Bishop of the Roman Church and the apostolic see, to all the Bishops of Germany and Gaul. PART XXVI. We find that only these nine prefaces are to be received in the sacred catalogue: that is, one for the Paschal *in albis*, another on the day of the Lord's Ascension, the third on the day of Pentecost, the fourth for the Nativity of the Lord, the fifth for the Manifestation of the Lord, the sixth for the Apostles, the seventh for the Holy Trinity, the eighth for the Cross, and the ninth to be said only for the fast in Lent.

C. LXXII. In all solemnities of Masses prayer shall be made for the deceased.

Likewise from the Council of Chalon, [II, c. 39]. PART XXVII. It further seemed good to us that in all solemnities of Masses the Church beseech the Lord in a fitting place for the spirits of the deceased. For just as no day is excepted on which prayer is not made for the living and for any necessities, so assuredly no day ought to be excepted on which prayers are not poured out to the Lord for the souls of the faithful in the solemnities of Masses. From antiquity, therefore, the holy Church holds this custom: that both in the solemnities of Masses and in other prayers the spirits of those at rest are commended to the Lord, as blessed Augustine says: "Supplications for the spirits of the dead are not to be omitted, which we commend to be made for all in the Christian and Catholic fellowship, even with the names of the deceased kept silent, those whom the Church has received under a general commemoration, so that for those who lack parents, children, or any relatives or friends for these things, this service may be furnished to them by the one common and pious mother."

C. LXXIII. Names are not to be recited by the priest before the prayers.

Likewise Innocent, Bishop of the City of Rome, to Decentius of Gubbio, [letter I, c. 2]. Concerning names being recited before the priest performs the prayer and commends by his prayer the offerings of those whose names are to be recited, you yourself recognize through your prudence how superfluous it is that you announce the name of one whose sacrifice you have not yet offered to God, although nothing is unknown to him.

Distinction II

GRATIAN.

C. I. Bread, wine, and water are to be offered in the sacraments.

Alexander, Bishop of the City of Rome, to all the orthodox, [letter I, c. 4]. PART I. In the offerings of the sacraments that are offered to the Lord among the solemnities of Masses, let only bread and wine mixed with water be offered in sacrifice. For neither wine alone nor water alone ought to be offered in the Lord's chalice, but both mixed, because both are read to have flowed from his side in his Passion.

C. II. Wine without water, or conversely, may not be offered in the sacraments.

Likewise Cyprian, [book II, letter 2], greetings to brother Caecilius. Just as water alone cannot be offered in sanctifying the Lord's chalice, so neither can wine alone. For if someone offers wine only, the blood of Christ begins to be without us. For when both are mixed and, united by a mingling with one another, are joined, then the spiritual and heavenly sacrament is effected. But so the Lord's chalice is not water alone or wine alone unless both are mixed, just as the Lord's body cannot be flour alone unless both have been united and joined and made firm by the coherence of one bread.

C. III. The same concerning the same matter.

Scripture says that as often as we offer the chalice in commemoration of the Lord and his Passion, we are to do what it is established that the Lord did. But see, dearest brother: if any of our predecessors either ignorantly or in simplicity did not observe and hold this which the Lord taught us to do by example and instruction, pardon can be granted to his simplicity from the Lord's indulgence; but we cannot be excused, who now have been admonished and instructed by the Lord to offer the Lord's chalice mixed with wine, according to what the Lord offered.

C. IV. Nothing except wine, water, and bread ought to be offered in the sacrament.

Likewise from the Council of Pope Martin, [c. 45]. Nothing else ought to be offered in the sanctuary except wine and water, which are blessed in a type of Christ, because while he hung on the cross, blood and water flowed from his body. These three are one in Christ Jesus; this is the victim and offering of God as an odor of sweetness.

C. V. On the same matter.

Likewise from the Third Council of Carthage, [c. 24]. In the sacrament of the Lord's body and blood, let nothing more be offered than what the Lord himself handed down, that is, bread and wine mixed with water.

§ 1. Nor let anything more be offered in sacrifices than what comes from grapes and grains of wheat.

C. VI. Let no one join grapes to the sacrifice of the offering.

Likewise from the Sixth Synod, [c. 28]. We have learned that in certain churches priests join grapes, which according to custom are offered upon the altar, to the sacrifice of the offering, and thus

distribute both together to the people. We therefore command that no priest do this further, but distribute the offering alone to the people for the remission of sins; and let the people who seek them receive the grapes separately after they have been blessed and give thanks for the fruits.

C. VII. Concerning those who erred in various ways while sacrificing.

Pope Julius to the Bishops throughout Egypt. Since every crime and sin is blotted out by sacrifices offered to God, what henceforth will be given to the Lord for the expiation of offenses when error occurs in the very offering of the sacrifice? For we have heard that some, held by schismatic ambition contrary to the divine ordinances and apostolic institutions, dedicate milk in place of wine in the divine sacrifices; that others offer the dipped Eucharist to the people as the completion of communion; that some also offer expressed wine in the sacrament of the Lord's chalice; but that others preserve throughout the whole year a linen cloth dipped in must and, at the time of sacrifice, wash a part of it with water and offer it thus. How contrary this is to evangelical and apostolic doctrine and opposed to ecclesiastical custom will not be difficult to prove from the very fountain of truth from which the ordered mysteries of the sacraments themselves proceeded. For when the teacher of truth commended the true sacrifice of our salvation to his disciples, we know that under this sacrament he gave no one milk, but only bread and the chalice. For it is read in the truth of the Gospel: "Jesus took bread and the chalice, and blessing them, gave them to his disciples." Therefore let milk cease to be offered in sacrifice, because the manifest and evident example of evangelical truth has shone forth that it is not permitted to offer anything except bread and wine.

§ 1. But as for the fact that they hand the dipped Eucharist to the people as the completion of communion, they did not receive this either from the testimony brought forth from the Gospel, where he commended his body and blood to the Apostles. For the commendation of the bread is recorded separately, and that of the chalice separately. For we do not read that Christ gave dipped bread to others, except only to that disciple whom the dipped morsel would point out as the betrayer of the master, not signify the institution of this sacrament. For that the people communicate from an expressed cluster, that is, from the berries of grapes, is altogether greatly confused; but if it is necessary, let a grape-cluster be pressed into the chalice and mixed with water, because according to the precept of the canons the Lord's chalice ought to be offered mixed with wine and water, because we see that the people are understood in the water, but the blood of Christ is shown in the wine. Therefore, when water is mixed with wine in the chalice, the people are united to Christ, and the assembly of believers is coupled and joined to him in whom it believes. This coupling and conjunction of water and wine is so mixed in the Lord's chalice that the mixture cannot be separated. For if anyone offers wine only, the blood of Christ begins to be without us. But if there is water alone, the people begin to be without Christ. Therefore, when a grape-cluster alone is offered, in which only the efficacy of wine is signified, the sacrament of our salvation, which is signified by the water, is neglected. For the Lord's chalice cannot be water alone or wine alone unless both are mixed.

§ 2. And therefore, because a very great and manifold judgment of our forebears has already flowed forth concerning this, henceforth every such error and presumption ought to cease, lest the disordered coherence of the perverse enervate the state of truth. And therefore it will henceforth be permitted to no one to offer anything else in the divine sacrifices except, according to the judgment of the ancient councils, bread alone and the chalice mixed with wine and water. One who henceforth

acts otherwise than was commanded shall cease from sacrificing for as long as, corrected by lawful satisfaction of penance, he returns to the office of the grade that he lost.

C. VIII. No offering can be compared to the body and blood of Christ.

Likewise Pope Alexander, fifth from Peter, [letter I]. PART II. Nothing can be greater among sacrifices than the body and blood of Christ, nor is any offering more excellent than this; rather, this surpasses all, and is to be offered to the Lord with a pure conscience, received with a pure mind, and venerated by all; and just as it is more excellent than the others, so it ought the more to be cultivated and venerated.

C. IX. We ought not to offer the peace before the mysteries have been confected.

Likewise Pope Innocent, greetings to Decentius, Bishop of Gubbio, [letter I, c. 1]. PART III. You assert, therefore, that some command the peace to the people before the mysteries have been confected, or that priests hand it among themselves, although after all those things—which I ought not disclose—the peace must necessarily be proclaimed. Through it, it is established that the people have given their consent to all that is enacted in the mysteries and celebrated in the church, and it is shown that these things have been finished by the seal of the concluding peace.

C. X. A minister who disdains to communicate after the consecration shall be deprived of the thresholds of the Church.

Likewise Pope Anacletus, [letter I]. When the consecration has been completed, let all communicate who do not wish to be deprived of the thresholds of the Church. For so the Apostles also established, and the holy Roman Church holds.

C. XI. Every priest shall receive holy communion as many times as he celebrates Mass.

Likewise from the Twelfth Council of Toledo, [c. 5]. PART IV. It has been reported to us that some priests do not receive the grace of holy communion as many times as they are seen to offer sacrifices in one day; rather, if they offer many sacrifices to God on one day, in all the offerings they withhold themselves from communion, and receive the grace of holy communion only in the offering of the final sacrifice, as though that true and singular sacrifice were not to be participated in as many times as the immolation of the body and blood of our Lord Jesus Christ is established to have taken place. For behold, the Apostle says: "Are not those who eat the victims participants in the altar?" It is certain that those who sacrifice and do not eat are guilty concerning the Lord's sacrament. Therefore, whichever of the priests henceforth approaches the divine altar to offer sacrifice and withholds himself from communion, let him know that for one year he is repelled from that grace of communion of which he indecently deprived himself. For what sort of sacrifice will it be in which even the one sacrificing is not known to be a participant? Therefore it must be maintained in every way that as many times as the one sacrificing immolates upon the altar the body and blood of Jesus Christ our Lord, so many times he is to make himself a participant in receiving the body and blood of Christ.

C. XII. A priest ought not to receive the body of Christ without his blood.

Likewise Pope Gelasius to Bishops Majoricus and John. We have discovered that some, having received only a portion of the sacred body, abstain from the chalice of the consecrated blood. These, without doubt—since they are said to be bound by I know not what superstition—must either receive the sacraments in their entirety or be barred from them in their entirety, because a division of one and the same mystery cannot occur without great sacrilege.

C. XIII. One who receives communion of the Eucharist daily is neither reproved nor praised.

Likewise Augustine, [*On Ecclesiastical Dogmas*, c. 53]. PART V. I neither praise nor censure receiving communion of the Eucharist daily, yet I exhort that one communicate on every Lord's day. If, however, the mind is disposed toward sinning, I say that it is burdened by receiving the Eucharist rather than purified. And therefore, although someone is being gnawed by sin, nevertheless let him not have a will to sin henceforth; and when about to communicate, let him make satisfaction by tears and prayers and, trusting in the Lord's mercy, approach the Eucharist intrepid and secure. But I say this concerning one whom mortal sins do not burden.

The same, [letter 118, c. 3]. § 1. One person may say that the Eucharist is not to be received daily; another affirms that it is daily: let each do what according to his faith he piously believes is to be done. For Zacchaeus and that centurion did not quarrel with one another, nor did either place himself above the other, when one of them joyfully received the Lord in his house and the other said: "Lord, I am not worthy that you should enter under my roof." Both honored the Savior, although not in one manner; both were wretched in sins; both obtained mercy. To this pertains the fact that the manna tasted in each person's mouth according to his own will.

C. XIV. One who always sins shall always receive the medicine of the heavenly sacrament.

Likewise Ambrose, [book IV *On the Sacraments*, final chapter]. If, as often as the blood of Christ is poured out, it is poured out for the remission of sins, I ought always to receive it. I, who always sin, ought always to have medicine.

C. XV. Let no one abstain from the body of the Lord unless he deserves to be excommunicated.

Likewise Bishop Hilary. If the sins are not so great that someone is to be excommunicated, he ought not to separate himself from the medicine of the Lord's body. Likewise Pope Fabian says:

C. XVI. Every one of the faithful shall communicate three times a year.

Even if not more frequently, let persons communicate at least three times a year, unless perhaps someone is impeded by any greater crimes: namely, at Easter, Pentecost, and the Nativity of the Lord. Likewise Pope Soter:

C. XVII. We ought to receive holy communion also at the Supper of the Lord.

At the Supper of the Lord the reception of the Eucharist is neglected by some. Ecclesiastical usage demonstrates that it is to be received on that same day by all the faithful—except those for whom it

has been prohibited because of grave crimes—since even penitents are reconciled on that same day for receiving the sacraments of the Lord's body and blood.

C. XVIII. One who turns himself away from communion of the sacrament because of his wantonness shall be cast out of the Church.

Likewise from the Council of Pope Martin, c. 83. If anyone enters the Church of God and hears the sacred Scriptures, but because of his wantonness turns himself away from communion of the sacrament and departs from the established rule of discipline in observing the mysteries, we decree that such a person is to be cast out of the Catholic Church until he does penance and shows the fruit of his penance, so that by receiving communion he may merit indulgence.

C. XIX. Those who disdain to communicate at these three times shall not be regarded as Catholics.

Likewise from the Council of Agde, [c. 18]. Secular persons who have not communicated at the Nativity of the Lord, Easter, and Pentecost shall not be believed to be Catholics, nor be regarded among Catholics.

C. XX. Those who disdain to communicate in church shall be corrected.

From the Council of Toledo, [I, c. 13]. Those who enter the church and are discovered never to communicate shall be admonished. So that if they do not communicate, they shall approach penance; if they do communicate, they shall not always abstain; if they have not done so, let them abstain.

C. XXI. Before holy communion everyone shall abstain from his own wife.

Likewise from the Council of Elvira. Every person ought to abstain from his own wife for three, four, or seven days before holy communion; nor will one be numbered among Catholics who has not communicated at these times, namely Easter, Pentecost, and the Nativity of the Lord. Likewise Pope Sergius:

C. XXII. Why three parts are made from the body of Christ.

PART VI. The body of the Lord is threefold. The part of the offering placed into the chalice shows the body of Christ that has already risen. The part consumed shows the body still walking upon the earth. The part remaining on the altar until the end of the Mass shows the body in the tomb, because until the end of the age the bodies of the saints will be in tombs. Clement, [letter II]:

C. XXIII. By whom the Lord's sacraments are to be handled.

PART VII. The sacraments of the divine secrets have been entrusted to three grades, that is, the presbyter, the deacon, and the minister, who must guard with trembling and fear the remnants of the fragments of the Lord's body.

The same. § 1. Certainly, let as many holocausts be offered upon the altar as ought to suffice for the people. But if any remain, let them not be preserved for the next day, but consumed with the fear, trembling, and diligence of the clerics. But those who consume the remnants of the Lord's body that have been left in the sacristy shall not immediately assemble to receive ordinary foods, lest they appear to mix with the holy portion food that, digested through the intestines, is discharged into the

privy. Therefore, if the Lord's portion is eaten in the morning, let the ministers who consumed it fast until the sixth hour; and if they have received it at the third or fourth hour, let them fast until evening. Thus are the sacraments to be guarded by an eternal, secret sanctification.

§ 2. We also command that portions of the Lord's offerings never be given at table to an outside cleric of the church or to a layperson. How do you know, you who indiscriminately dispense the sanctuary's loaves to the unworthy—how do you know whether they are clean from women? Hence David too, when he sought bread for himself to eat, was questioned by Abimelech the priest, and when he professed himself to have been clean for three days, he ate the loaves of proposition.

C. XXIV. Wicked persons who do not cease to communicate are polluted, not cleansed.

Likewise Isidore, [book I *On the Highest Good*, c. 24]. PART VIII. Let those who live wickedly in the Church and do not cease to communicate, thinking themselves to be cleansed by such communion, learn that it profits them nothing toward cleansing, as the Prophet says: "Why has my beloved committed many crimes in my house? Will holy flesh take your wickednesses away from you?" And the Apostle says: "Let a person prove himself, and so let him eat of that bread and drink from the chalice." Likewise from the Eighth Synod. Bishop Basil said:

C. XXV. One who communicates unworthily in Christ's sacraments acquires damnation, not salvation.

The Apostle indeed teaches us fear, saying: "One who eats and drinks unworthily eats and drinks judgment for himself." But the word of the Lord teaches us faith, saying: "This is my body, which is given for many. Do this in commemoration of me."

§ 1. And the Apostle says concerning the only-begotten Son of God: "He humbled himself, becoming obedient unto death, even death on a cross." Therefore, when the soul has faith in these sayings, considers the magnificence of his glory, and wonders at the excess of his humility—how so great and such a one was obedient to the Father unto death for our life—I judge that it can be aroused to affection and love for him and for God the Father, who did not spare his only Son but handed him over for us all.

§ 2. Therefore, one who receives the Lord's bread and chalice ought to prepare such faith and affection in his mind.

C. XXVI. It is to be considered not by whom, but before whom, an offering is made.

Likewise Augustine in the book *Questions on Numbers*, [question XX]. "And the Lord said to Moses and to Eleazar son of Aaron the priest: 'Take the bronze censers from the midst of those who were burned, and scatter this strange fire there, because they sanctified the censers of these sinners with their lives; and you shall make them into beaten plates as a covering for the altar, since they were offered before the Lord and were sanctified, and were made as a sign to the sons of Israel.'" But it is to be noted that their punishment was called "sanctified" in a new manner, the punishment of those by whom this sin had been perpetrated, because through them an example was given to the others whereby they might fear. But why he wished a covering for the altar to be made from them he added, saying: "Since they were offered before the Lord and were sanctified, they were made as a sign to the

sons of Israel." Therefore, in them he did not wish the fact that they were offered by such persons to be condemned; rather, he wished this to be thought and attended to: before whom they were offered, that is, because they were offered before the Lord, so that the name of the Lord, before whom they were offered, might possess greater force in them than the most wicked merit of those by whom they were offered.

C. XXVII. The penance of one through whose negligence some of Christ's blood spills.

Likewise from the Decree of Pope Pius. PART IX. If through negligence some of the blood has spilled upon the ground, let it be licked up and the board scraped. If there was no board, let the place be scraped so that it is not trodden upon, and let what was scraped be consumed by fire, and let the ash be stored within the altar; and let the priest do penance for forty days. If the chalice has spilled upon the altar, let the minister suck up the drop and do penance for three days. If it has spilled upon the altar linen and the drop has reached another linen, let him do penance for four days. If as far as a third, for nine days. If as far as a fourth, for twenty days. And let the minister wash the linens that the drop touched three times, with a chalice placed beneath; and let the water of the washing be taken up and stored beside the altar.

C. XXVIII. What penance is to be imposed upon one who vomits the sacrifice.

Likewise from the *Penitential* of Bede the Presbyter, [chapter on drunkenness]. If anyone has vomited the Eucharist through drunkenness or gluttony, let him do penance for forty days; clerics, monks, deacons, or presbyters, for seventy days; bishops, for ninety. If one has vomited because of illness, let them do penance for seven days.

C. XXIX. Priests shall administer the divine sacraments only in person.

Likewise from the Council of Reims, c. 2. PART X. It has come to our knowledge that certain presbyters hold the divine mysteries in so little regard that they hand the sacred body of the Lord to a layman or woman to carry to the sick, and the holy of holies are entrusted to those who are prohibited from entering the sacristy or approaching the altar. How horrible and detestable this is, the prudence of all religious persons perceives. Therefore the synod altogether prohibits such rash presumption from taking place further; rather, in every way let the presbyter communicate the sick person in person. But if he has acted otherwise, he will lie under danger to his grade.

C. XXX. When Mass is celebrated, laypersons shall not presume to enter the presbytery.

Likewise Pope Clement. PART XI. It is fitting that the honors of priests and other clerics serving churches appear distinct from those of laypersons. Therefore it is permitted to no layperson to stand in the place where priests and the other clerics stand—which is called the presbytery—when Mass is celebrated, so that the sacred offices can be exercised freely and honorably.

C. XXXI. Just as in the metropolitan church, so everywhere the solemnities of Masses shall be celebrated.

Likewise from the Council of Girona, [c. 1]. PART XII. Let the institution of Masses be observed in the name of God in all provinces just as it is performed in the metropolitan church, both the order of the Mass itself and the custom of psalmody or ministry.

C. XXXII. What sacrifice is; what sacrament is.

Likewise Augustine in book X of *The City of God,* [c. 5]. PART XIII. A sacrifice is the visible sacrament of an invisible sacrifice, that is, a sacred sign.

Likewise elsewhere. § 1. A sacrament is the visible form of invisible grace.

C. XXXIII. What a sign is.

The same in book II of *On Christian Doctrine*, [c. 1]. A sign is a thing which, beyond the appearance that it presents to the senses, causes something else to come into cognition from itself. Likewise Gregory in an Easter homily:

C. XXXIV. After consecration, not the substance but the species remains.

"Species" and "likeness" are the names of those things that existed before, namely bread and wine. Hence at the end of a certain Mass prayer is made and it is said: "May your sacraments, we beseech you, Lord, accomplish in us what they contain, so that what we now bear in a species we may receive in the reality of the things."

The priest indeed asks that the body of Christ, which is now borne under the species of bread and wine, may sometime be received in manifest vision, just as it truly is. Concerning this vision the Lord says in the Gospel according to John: "He who loves me will be loved by my Father, and I will love him and manifest myself to him." Although some not improbably expound in this place the reality itself of the flesh and blood as the efficacy of those same things, that is, the remission of sins.

C. XXXV. Visible creatures are invisibly converted into Christ's body and blood.

Likewise Eusebius of Emesa. PART XIV. Because he was about to remove the assumed body from sight and bring it to the stars, it was necessary that on the day of the Supper he consecrate for us the sacrament of his body and blood, so that what was once offered as a price might perpetually be cultivated through a mystery; so that, because a daily and unwearied redemption was proceeding for the salvation of human beings, the offering of redemption might be perpetual, and that perpetual victim might live in memory and always be present in grace, truly a unique and perfect sacrifice, to be appraised by faith, not by appearance, nor judged by outward sight, but by inward affection. Hence heavenly authority confirms that "my flesh is truly food and my blood is truly drink."

§ 1. Therefore let every uncertainty of unbelief withdraw, since he who is the author of the gift is himself also a witness of its reality. For the invisible priest also converts the visible creatures into the substance of his body and blood by his word through hidden power, saying thus: "Take and eat; this is my body"; and with the sanctification repeated: "Take and drink; this is my blood." Therefore, at the nod of the Lord who commands, the heights of the heavens, the depths of the waves, and the

expanses of the lands suddenly came forth from nothing. By equal power in the spiritual sacraments, where power commands, the effect serves.

§ 2. Therefore, how great and how worthy of celebration are the benefits that the force of the divine blessing works, and how it ought not to seem new and impossible to you that earthly and mortal things are converted into Christ's substance—ask yourself, you who have been regenerated in Christ. A little while ago, alien to life, a stranger to mercy, and inwardly dead to the way of salvation, you wandered in exile. Suddenly, initiated into Christ's laws and renewed by the saving mysteries, you passed over into the body of the Church not by seeing but by believing; and from a son of perdition you merited to become an adopted son of God by hidden purity. Remaining in visible measure, you became greater than yourself invisibly without increase of quantity. Although you were one and the same, you came forth greatly other through the advances of faith; nothing was added outwardly, and everything was changed inwardly. And thus a human being was made a son of Christ, and Christ was formed in the mind of the human being. Therefore, just as without bodily perception you suddenly put aside your former vileness and were clothed with new dignity; and just as what God healed in you when injured, washed when infected, and wiped clean when stained, was entrusted not to your eyes but to your understanding: so, when you ascend the reverend altar to be filled with spiritual foods, behold the sacred body and blood of your God by faith; honor it, marvel at it, touch it with the mind, receive it with the hand of the heart, and above all take the whole of it by the draught of the inward person.

C. XXXVI. Why Christ ministered his sacrament to us in the species of bread and wine.

Likewise Augustine. Because the Lord suffered for us, he commended to us in this sacrament his blood and body, which he also made us ourselves. For we too have been made his body, and through his mercy we are what we have received. Remember: you did not exist, and you were created; you were carried to the Lord's threshing floor; you were threshed by the labors of the oxen, that is, of those announcing the Gospel. When you were being carried as catechumens, you were being kept in the granary; you gave your names; you began to be ground by fasts and exorcisms; afterward you came to the water and were sprinkled, and you were made the Lord's bread. Behold what you have received. Therefore, just as you see that what was made is one, so be one yourselves, loving one another, holding one faith, one hope, an undivided charity. When heretics receive this, they receive testimony against themselves, because they seek division when this bread points to unity. So too wine was in many clusters and now is one; the chalice is one in its birth after the pressing of the winepress. And you, after those fasts, after labors, after humiliation and contrition, have now come in Christ's name as though to the chalice; and there you are upon the table and in the chalice; you are with us. For together we receive this, together we drink, because together we live.

Likewise in the sermon on infants. § 1. Thus our Lord Jesus Christ signified us, willed us to belong to himself, and consecrated at the table the mystery of our peace and unity. One who receives the mystery of unity and does not hold the bond of peace has not received a mystery for himself but testimony against himself. It is in no way to be doubted by anyone that each of the faithful is then a participant in the Lord's body and blood when in baptism he is made a member of Christ, nor is he estranged from the fellowship of that bread and chalice even if, before he eats that bread and drinks the chalice, he departs from this world while established in the unity of Christ's body. For he is not

deprived of participation in and the benefit of that sacrament when that which the sacrament signifies is found in him.

C. XXXVII. While the host is broken, Christ's Passion is recalled to memory.

The same in the book of Prosper's *Sentences*. While the host is broken, while the blood from the chalice is poured into the mouths of the faithful, what else is signified but the immolation of the Lord's body upon the cross and the pouring out of his blood from his side? Likewise Bishop Leo and the holy synod that assembled in the city of Rome, to the Clergy, honored persons, and people dwelling at Constantinople:

C. XXXVIII. No one is permitted to doubt the reality of Christ's body and blood.

PART XV. In what darkness of ignorance, in what torpor of sloth have these persons lain until now, so that they learned neither by hearing nor knew by reading what is so harmonious in the mouth of all in the Church that even from the tongues of infants the reality of Christ's body and blood is taught among the sacraments of communion? For in that mystical distribution of spiritual nourishment, this is imparted, this is received: that, receiving the power of the heavenly food, we pass into the flesh of him who became our flesh. The same is the food of refreshment, is the food of blood. For just as the Lord's flesh is truly food, so his blood truly is our drink.

The same. § 1. It is the body concerning which it was said: "My flesh is truly food, and my blood is truly drink." Around this body are the eagles that fly about on spiritual wings.

§ 2. Hence we also eat that same body of Christ so that we may be participants in eternal life.

The same. § 3. Let us use the examples of him whose clear arguments we use; and by the example of the incarnation also let us establish the reality of the mystery.

§ 4. Why do you seek the order of nature here in Christ's body, when Christ himself was born from a Virgin beyond nature?

C. XXXIX. The body and blood of Christ are not born by nature but confected for us by consecration.

Likewise Ambrose in the book *On Catechizing the Uninstructed*. The bread and chalice—not just any bread and chalice, but made mystical for us by a determinate consecration—are not born. Therefore, what is made thus for us, although it is bread and chalice, is nourishment of the resurrection, not a sacrament of religion; not that which we bless and for which we give thanks to the Lord in every gift of his, not only spiritual but also bodily.

C. XL. What before the blessing is bread and wine, after the blessing is the body and blood of Christ.

The same in the book *On Offices*. Before the blessing one species is named; after the blessing the body is signified.

Likewise. § 1. In that sacrament Christ is.

Likewise, [book IV *On the Sacraments*, c. 5]. § 2. Whoever eats this body, remission of sins will be effected for him.

C. XLI. Under the species of bread and wine we honor the invisible flesh and blood of Christ.

Likewise Augustine in the book of Prosper's *Sentences*. But we honor, in the species of bread and wine which we see, the invisible realities, that is, flesh and blood; nor do we value these two species in the same manner as we valued them before consecration, since we faithfully confess that before consecration there are bread and wine, which nature formed, but after consecration there are Christ's flesh and blood, which the blessing consecrated.

C. XLII. The confession of Berengar.

PART XVI. I, Berengar, unworthy deacon of the Church of Saint Maurice of Angers, acknowledging the true, Catholic, and apostolic faith, anathematize every heresy, especially that of which I have until now been accused, which endeavors to assert that the bread and wine which are placed upon the altar are after consecration only a sacrament and not the true body and blood of our Lord Jesus Christ, and that they cannot perceptibly—except in the sacrament alone—be handled or broken by the hands of the priests or ground by the teeth of the faithful. But I consent to the holy Roman Church and apostolic see, and with mouth and heart profess that concerning the sacraments of the Lord's table I hold the same faith which lord and venerable Pope Nicholas and this holy synod, by evangelical and apostolic authority, have handed down as to be held and have confirmed for me: namely, that the bread and wine which are placed upon the altar are after consecration not only a sacrament but also the true body and blood of our Lord Jesus Christ, and perceptibly are not only a sacrament but in truth are handled and broken by the hands of the priests and ground by the teeth of the faithful; swearing by the holy and consubstantial Trinity and by these most sacred Gospels of Christ. I pronounce that those who come against this faith, together with their doctrines and their followers, are worthy of eternal anathema. But if I myself should at any time presume to think or preach anything contrary to these things, let me lie under the severity of the canons. Having read and reread it, I willingly subscribed.

§ 1. Pope Nicholas sent throughout the cities of Italy, Germany, and Gaul, and to whatever places the report of his depravity had previously been able to reach, this confession of his faith concerning the body and blood of our Lord Jesus Christ, made by Berengar at Rome in the presence of 113 bishops, so that the churches which had first grieved over one who was turned away and adverse might afterward rejoice over one who was returned and converted.

C. XLIII. Why the species of the elements are preserved, although there truly is Christ's body and blood.

Ambrose in the book *On Offices*. Perhaps you say: How is there true flesh, how true blood, when I do not see the likeness of flesh, I do not see the reality of blood? First of all, I told you concerning the word of Christ, which works so as to be able to change and convert the kinds and institutions of nature. Then, when his disciples did not bear the word of Christ but, hearing that he would give his flesh to eat and his blood to drink, were withdrawing, Peter alone nevertheless said: "You have the words of eternal life, and how shall I withdraw from you?" Therefore, lest more persons say this, and

lest there be as it were a certain horror of blood, but the grace of redemption remain, for this reason you indeed receive the sacrament in a likeness, but truly attain the glory and power of the nature. "I am," he says, "the living bread that descended from heaven."

C. XLIV. We ought to receive Christ's body and blood not carnally but spiritually.

Likewise Augustine in the exposition of Psalm 54. The first heresy, he says, indeed arose among Christ's disciples, as though from the hardness of his discourse. For when he said, "Unless someone eats my flesh and drinks my blood, he will not have eternal life," they, not understanding, said to one another: "This is a hard discourse; who can eat it?" By saying that this is a hard discourse, they separated themselves from him, and he remained with the twelve. As they departed, he instructed those who had remained. "It is the Spirit," he says, "that gives life; the flesh profits nothing. The words that I have spoken to you are Spirit and life." Have you understood them spiritually? They are Spirit and life. Have you understood them carnally? Even so, they are Spirit and life, but they are not so for you. Understand spiritually the things that I have spoken. You are not going to eat this body which you see and drink that blood which those who crucify me are going to pour out. I have commended a certain sacrament to you: understood spiritually, it will give you life; but the flesh profits nothing. Yet how did they understand it? They understood flesh in the manner in which it is sold in a corpse or torn apart in the meat market. "But Jesus, knowing, said: Does this scandalize you, because I said: I give you my flesh to eat and my blood to drink? What, then, if you see the Son of Man ascending where he was before?" What is this? From this he resolved what had disturbed them; from this he disclosed the source of their scandal: from this plainly, if they understood. But they thought that he was going to distribute his body. He said that he was going to ascend into heaven, assuredly whole. "When you see the Son of Man ascending where he was before," certainly then at least you will see that he does not distribute his body in the manner in which you think, or then at least you will understand that his grace is not received in bites.

Likewise, [tractate 30 on John]. § 1. Until the age is ended, the Lord is above; but nevertheless even here the Lord's reality is with us. For the body in which he rose must be in one place, but his reality is diffused everywhere.

C. XLV. How Christ's body that hung upon the cross is received, and how it is not.

Likewise Augustine in the letter to Irenaeus. You are not going to eat this body which you see and drink that blood which those who crucify me will pour out: the same indeed and not the same—the same invisibly, not the same visibly. Hence it is also added: If it is necessary that it be celebrated visibly, nevertheless it is necessary that it be understood invisibly.

C. XLVI. What it is to eat Christ's body and drink his blood.

Likewise Augustine in the sermon on the words of the Gospel. What is it to eat Christ? It is not this alone: to receive his body in the sacrament. For many receive it unworthily, concerning whom the Apostle says: "He who eats and drinks the chalice of the Lord unworthily eats and drinks judgment for himself." But how is Christ to be eaten? As he himself says: "He who eats my flesh and drinks my blood remains in me, and I in him." Even if he receives the sacrament, he acquires a great torment.

C. XLVII. To believe in Christ is to eat him.

Likewise Augustine in the book *On the Remedy of Penance*. Why do you prepare tooth and belly? Believe, and you have eaten. For to believe in him is to eat the living bread. He who believes in him eats him.

C. XLVIII. The sacrament and the reality of the sacrament are confected as the sacrifice of the Church.

Likewise Augustine in the book of Prosper's *Sentences*. This is what we say, what we strive in every way to prove: that the sacrifice of the Church is confected from two things and consists of two things —the visible species of the elements and the invisible flesh and blood of our Lord Jesus Christ; and the sacrament and the reality of the sacrament, that is, the body of Christ—just as the person of Christ consists and is composed of God and a human being, since Christ himself is true God and true man, because every thing contains in itself the nature and reality of those things from which it is composed. But the sacrifice of the Church is confected from two things: the sacrament and the reality of the sacrament, that is, the body of Christ. Therefore there is the sacrament and the reality of the sacrament, that is, the body of Christ.

Likewise. § 1. It is his flesh which we receive in the sacrament covered by the form of bread, and his blood which we drink under the species and flavor of wine. The flesh, namely, is the sacrament of flesh, and blood the sacrament of blood; by flesh and blood, each invisible, spiritual, and intelligible, is signified the visible and palpable body of our Lord Jesus Christ, full of the grace of all virtues and of divine majesty.

Likewise. § 2. Therefore, just as the heavenly bread, which truly is Christ's flesh, is in its own manner called the body of Christ, although in reality it is the sacrament of Christ's body—namely, of that body which, visible, palpable, and mortal, was placed upon the cross—and the immolation of the flesh itself which is performed by the hands of the priest is called Christ's Passion, death, and crucifixion, not in the reality of the thing but in a signifying mystery: so the sacrament of faith, by which baptism is understood, is faith.

C. XLIX. In how many ways Christ's flesh is understood.

Jerome in the letter to the Ephesians, [on chapter 1]. Christ's flesh and blood, he says, are understood in two ways: either that spiritual and divine flesh concerning which he himself says, "My flesh is truly food, and my blood is truly drink," and, "Unless you eat my flesh and drink my blood, you will not have eternal life"; or my flesh which was crucified, and the blood which was poured out by the soldier's lance.

C. L. On the same matter.

Likewise Augustine in the book *On the Trinity to the Corinthians*. Because we have been freed by the Lord's death, mindful of this thing, in eating and drinking we signify the flesh and blood that were offered for us.

C. LI. How Christ was immolated once and how he is immolated daily.

Likewise on Psalm 20. PART XVII. Christ died once, the righteous for the unrighteous; and we know, hold as certain, and retain with immovable hope that "Christ, rising from the dead, now dies no

more; death will have no further dominion over him." These are the words of the Apostle. Nevertheless, lest we forget, what was done once takes place every year in our memory. As often as Easter is celebrated, is Christ killed so often? Yet the anniversary recollection represents what was done long ago and thus causes us to be moved as though we saw the Lord present upon the cross.

C. LII. Likewise in the book of Prosper's *Sentences*.

Christ was immolated once in himself and nevertheless is immolated daily in the sacrament. This is to be understood thus: that in the manifestation of his body, in the distinction of all his members, true God and true man hung only once upon the cross, offering himself to the Father as a living and passible victim, mortal and effectual for the redemption of the living and the dead—namely, of those whom the height of divine counsel judged, foreknew, predestined, and called as to be redeemed, in the manners and at the times in which it was fitting for this to take place.

C. LIII. The victim that was offered once is offered daily in recollection of his death.

Likewise Ambrose in the letter to the Hebrews, [c. 10]. In Christ a victim powerful for everlasting salvation was offered once. What, then, of us? Do we not offer on each day? We offer, but in recollection of his death, and there is one victim, not many. How one and not many? Because Christ was offered once. But this sacrifice is an exemplar of that one, always the selfsame, the selfsame. Accordingly, this is the sacrifice; otherwise, will it be said that, because it is offered in many places, there are many Christs? By no means; rather, Christ is one everywhere, existing in fullness both here and there. For just as what is offered everywhere is one body and not many bodies, so too there is one sacrifice. But he is the pontiff who offered the victim that cleanses us. Even now we offer that same victim which, offered then, cannot be consumed. What we do takes place in commemoration of what was done: "For do this," he says, "in commemoration of me."

C. LIV. We ought to receive the sacrament of Christ's body only while fasting.

Likewise Augustine in the book of responses to Januarius, [c. 6]. PART XVIII. It plainly appears that when the disciples first received the Lord's body and blood, they did not receive them while fasting. Is the universal Church nevertheless to be assailed on that account because it is always received by persons who are fasting? For from this it pleased the Holy Spirit that, in honor of so great a sacrament, the Lord's body enter a Christian's mouth before external foods. For this reason this custom is observed throughout the whole world. Nor indeed, because the Lord gave it after foods, ought brothers who have eaten lunch or supper therefore to assemble to receive that sacrament, or mix these things with their own tables, as those whom the Apostle reproves and corrects were doing. For the Savior, that he might commend the sublimity of that mystery more vehemently, wished to impress this last upon the hearts and memory of the disciples from whom he was about to depart for the Passion; and therefore he did not prescribe the order in which it was thereafter to be received, so that he might reserve this place for the Apostles through whom he was going to order the churches. For if he had admonished that it always be received after other foods, I believe no one would have changed that custom. But when the Apostle, speaking of this sacrament, says, "Therefore, brothers, when you assemble to eat, wait for one another; if anyone is hungry, let him eat at home, so that you do not assemble unto judgment," he immediately added: "But the other things I will order when I

come." From this it is given to be understood that, because it was too much to intimate to them in a letter the whole order of what was to be done, that which the universal Church throughout the world observes, and which is varied by no diversity of hours, was ordered by him.

C. LV. Before consecration it is bread, but by Christ's words it is converted into his body.

Likewise Ambrose in book IV *On the Sacraments*, [c. 4]. PART XIX. There is customary bread upon the altar before the words of the sacraments; when consecration has acceded, from bread it becomes Christ's flesh. But how can that which is bread be Christ's body? By consecration. But by what words, by whose discourses, is the consecration? Those of the Lord Jesus. For in all the other things that are said, praise is offered to God and request is made in prayer for the people, for kings, and for the others. But when the sacrament is confected, the priest no longer uses his own discourses but the discourses of Christ. Therefore the word of Christ confects this sacrament. What word of Christ? This one, by which all things were made. The Lord commanded, and heaven, earth, and sea were made. You see, therefore, how operative the word of Christ is. If, then, there is such power in the word of the Lord Jesus that what did not exist began to exist, how much more operative is it that things which existed should exist and be changed into another thing? And thus what was bread before consecration is now Christ's body after consecration, because the word of Christ changes the creature, and thus from bread Christ's body is made, and wine mixed with water in the chalice becomes blood by the consecration of the heavenly word.

§ 1. But perhaps you say: I do not see the species of blood; but it has a likeness. For just as you assumed the likeness of death, so you also drink the likeness of blood, so that there may be no horror of blood and yet the price of redemption may operate. You have learned that you receive Christ's body.

[And c. 5.] § 2. Do you wish to know that it is consecrated by heavenly words? Hear what the words are. The priest says: "Make this offering for us," he says, "enrolled, rational, etc." From that point all those words belong to the Evangelist until "Take," whether the body or the blood. From that point they are Christ's words: "Take and drink from this, all of you; for this is my blood." See each thing. "Who," he says, "on the day before he suffered took bread into his holy hands." Before it is consecrated, it is bread; but when Christ's words have acceded, it is Christ's body. Then hear him saying: "Take and eat from it, all of you; for this is my body." And before Christ's words, the chalice is full of wine and water. When Christ's words have operated, there the blood that redeemed the people is effected.

§ 3. Therefore see how powerful Christ's word is to convert all things. Then Jesus himself testifies that we receive his body and his blood. We ought not to doubt his faith and testimony.

C. LVI. The bread of eternal life sustains not the body but the soul.

Likewise. This is not the bread that goes into the body, but the bread of eternal life, which sustains the substance of our soul.

§ 1. This bread is daily; receive daily what may profit you daily; so live that you may merit to receive daily.

C. LVII. Christ is living bread also according to the flesh.

Likewise Augustine in the letter to Irenaeus. Christ is the bread of which one who eats lives eternally, concerning which he himself said: "And the bread that I will give is my flesh, for the life of the world, etc." He determines how he is bread: not only according to the Word, by whom all things live, but according to the flesh assumed for the life of the world. For human flesh, which was dead in sin, united to the pure flesh, incorporated into and made one with it, lives from his Spirit, just as one body lives from its own spirit. But one who is not of Christ's body does not live from Christ's Spirit.

C. LVIII. That Christ is eaten and drunk visibly in the sacrament, spiritually in reality.

Likewise. Those who eat and drink Christ eat and drink life. To eat that is to be refreshed; to drink that is to live. What is visibly received in the sacrament is spiritually eaten and drunk in reality itself. Christ is eaten; once eaten he lives, because, having been killed, he rose. Nor when we eat do we make parts from him. And because it takes place thus in the sacrament—and the faithful know how they eat Christ's flesh—each receives his own part, whence by this grace they are also called parts. He is eaten in parts and remains whole and entire in your heart. He was wholly with the Father when he came into the Virgin; he filled her and did not withdraw from him.

§ 1. What is seen is bread and a chalice, which the eyes also report. But what faith, which must be instructed, demands is that the bread is Christ's body and the chalice his blood.

§ 2. These are therefore called sacraments because in them one thing is seen and another is understood. What is seen has a bodily species; what is understood has spiritual fruit.

§ 3. One who receives the mystery of unity and does not hold the bond of peace does not receive the mystery for himself but testimony against himself.

C. LIX. How Christ's body is to be received spiritually.

The same on John, [on c. 6, tractates XXVI and XXVII]. To believe in Jesus Christ is to eat the living bread. One who believes eats. He is invisibly fattened because he is invisibly reborn. "And he who eats my flesh and drinks my blood has eternal life." For by participation in the Son—which is through the unity of his body and blood—the person who eats lives, not receiving merely in the sacrament, which the wicked also do, but as far as participation in the Spirit, so that he may remain in the Lord's body as a member and be made vigorous by his Spirit, which occurs while he keeps his commandments.

§ 1. He arrives at the invisible altar of God—which the unjust person does not approach—who approaches this present altar justified. He who here discerns his own cause will find life there.

C. LX. The Holy Spirit invisibly sanctifies Christ's body and blood.

The same in book III *On the Trinity*, [c. 4]. We call Christ's body and blood that which, received from the fruits of the earth and consecrated by mystical prayer, we rightly receive for spiritual salvation in memory of the Lord's Passion. Although this is brought through human hands to that visible species, it is not sanctified so as to be so great a sacrament unless the Spirit of God operates invisibly, since God operates all these things that take place through bodily movements in that work.

C. LXI. Through the blessing bread becomes Christ's body.

Likewise. Not every bread, but that which receives Christ's blessing, becomes Christ's body.

C. LXII. Christ's body is understood in two ways.

Likewise. For Christ commended in this sacrament his body and blood, which he also made us ourselves. For we too have been made his body.

C. LXIII. The sacrifice of the altar is the sacrament of unity.

Likewise, [tractate XXVI on c. 6 of John]. This is the sacrament of piety, the sign of unity, the bond of charity. Let one who wishes to live approach and believe; let him be incorporated.

§ 1. He wishes this food and drink to be understood as the fellowship of his body and members, which belongs to the Church among the predestined.

C. LXIV. We ought to receive Christ's body more spiritually than bodily.

Likewise. PART XX. To eat the bread from the altar spiritually is to bring innocence to the altar. Even if sins are daily, let them not be mortal. Before you approach: "Forgive your debtors." If you forgive, you will be forgiven. Approach securely; it is bread and not poison. But see whether you forgive, lest you lie to God, whom you do not deceive. You can lie to God; you cannot deceive him.

C. LXV. One who is in discord with Christ receives the sacrament, not the reality, of Christ's body.

Likewise, [in the book of *Sentences*, c. 139]. One who is in discord with Christ neither eats his flesh nor drinks his blood, even if he daily receives the sacrament of so great a thing unto the judgment of his own perdition.

C. LXVI. Holy things harm the wicked, and evil things profit the good.

Likewise, [tractates VI and LXII on John]. Even holy things can harm the wicked; they are unto salvation for the good, unto judgment for the wicked. Hence the Apostle: "He who eats and drinks unworthily eats and drinks judgment for himself," not because that thing is evil, but because an evil person receives badly what is good. For the morsel that was given to Judas by the Lord was not evil. The physician gave salvation; but because one who was unworthy received it, he received it unto his own destruction. And evil things profit the good, as the angel of Satan profited Paul. For good is made through evil when evil is received well.

C. LXVII. The wicked shall not be prohibited from eating from the Lord's table.

The same. Let the steward not prohibit the fat ones of the earth from eating the Lord's table, but let him admonish them to fear the exactor.

C. LXVIII. Even one who approaches unworthily nevertheless receives Christ's body.

The same, [in book V *On Baptism*, c. 8]. Just as Judas, when Christ handed him the morsel, gave place to the devil not by receiving an evil thing but by receiving badly, so anyone unworthily receiving

Christ's body does not cause it to be evil because he is evil, or cause himself to receive nothing because he does not receive unto salvation. For the Lord's body and blood were nevertheless in those to whom the Apostle said: "He who eats unworthily eats and drinks judgment for himself."

C. LXIX. By what examples it is proved that, beyond nature, the substance of bread and wine is converted into Christ's body and blood.

Likewise Ambrose, *On the Sacraments*. PART XXI. It is truly marvelous that God rained manna upon the fathers and that they were fed by the daily nourishment of heaven. Hence it was said: "A human being ate the bread of angels." Nevertheless, all who ate that bread died in the desert. But this food which you receive, this living bread which descended from heaven, ministers the substance of eternal life, and whoever eats it will not die eternally; and it is Christ's body. Consider now whether the bread of angels is more excellent, or the flesh of Christ, which assuredly is the body of life. That manna was from heaven; this is above heaven. That was of heaven; this is of the Lord of the heavens. That was liable to corruption if it was preserved for another day; this is alien to all corruption, and whoever tastes it religiously will not be able to experience corruption. For them water flowed from a rock; for you blood flowed from Christ. Water satisfied them for an hour; blood washes you eternally. The Jew drinks and thirsts; when you have drunk, you will not be able to thirst. And that was in a shadow; this is in reality. If that which you marvel at is a shadow, how great is that whose shadow you marvel at? Hear that what occurred among the fathers is a shadow: "They drank," he says, "from the rock following them; but the rock was Christ. Yet God was not pleased with many of them, for they were laid low in the desert. But these things were done as a figure of us." You have recognized the more excellent things: for light is more excellent than shadow, reality than figure, the body of the author than manna from heaven.

§ 1. Perhaps you say: I see another thing; how do you assert to me that I receive Christ's body? And this still remains for us to prove. How many examples, therefore, do we use to prove that this is not what nature formed but what the blessing consecrated, and that the power of the blessing is greater than that of nature, because by the blessing even nature itself is changed? Moses was holding a rod; he cast it down and it became a serpent. Again he took hold of the serpent's tail, and it returned to the nature of a rod. You see, therefore, that by prophetic grace the nature both of the serpent and of the rod was changed twice. The rivers of Egypt were running with the pure course of waters; suddenly blood began to burst forth from the veins of the springs; there was no drink in the rivers. Again, at the Prophet's prayers, the gore of the rivers ceased and the nature of waters returned. The people of the Hebrews were enclosed on every side, hemmed in here by the Egyptians, shut in there by the sea. Moses raised the rod; the water separated itself and congealed into the appearance of walls, and a path for feet appeared between the waves. The Jordan, turned backward against nature, returns toward the beginning of its spring. Is it not clear that the nature either of the waves of the sea or of the river's course was changed? The people of the fathers were thirsty; Moses touched the rock, and water flowed from the rock. Did grace not operate beyond nature, so that a rock vomited forth water which it did not have by nature? The river Marah was most bitter, so that the thirsty people could not drink; Moses cast wood into the water, and the nature of the waters put aside its bitterness, which grace suddenly infused tempered. Under the prophet Elisha, the iron was knocked from an axe belonging to one of the sons of the prophets and immediately sank. The one who had lost the iron

entreated Elisha; Elisha also cast wood into the water, and the iron swam. Assuredly we know that this too was done beyond nature, for the species of iron is heavier than the liquid of waters.

§ 2. We perceive, therefore, that grace is greater than nature; and yet until now we are recounting the grace of a prophetic blessing. But if a human blessing possessed such power that it converted nature, what do we say of the divine consecration itself, where the very words of the Lord and Savior operate? For this sacrament which you receive is confected by Christ's discourse. If Elijah's discourse possessed such power that it brought fire down from heaven, will Christ's discourse not have power to change the species of the elements? You have read concerning the works of the whole world: "Because he spoke and they were made; he commanded and they were created." Therefore the discourse of Christ, which was able to make from nothing what did not exist, cannot change those things which exist into that which they were not? For it is no lesser thing to give new natures to things than to change them.

§ 3. But why do we use arguments? Let us use his own examples, and by the mystery of the incarnation let us establish the reality of the mystery. Did the customary course of nature precede when the Lord Jesus was born from Mary? If we seek the order, a woman joined to a man was accustomed to generate. It is clear, therefore, that the Virgin generated beyond the order of nature. And this which we confect is the body from the Virgin. Why do you seek the order of nature here in Christ's body, when the Lord Jesus himself was born from a Virgin beyond nature? It was assuredly the true flesh of Christ which was crucified, which was buried. Therefore it truly is the sacrament of that flesh. The Lord Jesus himself cries: "This is my body." Before the blessing of the heavenly words, another species is named; after consecration, the body is signified. He himself calls it his blood. Before consecration, another thing is said; after consecration, it is called blood. You say, "Amen," that is, "It is true." Let the affection feel what the discourse sounds.

C. LXX. How Christ is eaten in parts and remains whole.

Augustine in a certain sermon on the words of the Gospel. The Lord invites servants and prepares himself as food for them. Who would dare to eat his Lord? And nevertheless he says: "He who eats me lives because of me." When he is eaten, life is eaten; nor is he killed in order to be eaten, but he gives life to the dead. When he is eaten, he refreshes but does not fail. Christ is eaten; once eaten he lives, because, having been killed, he rose. Nor when he is eaten do we make parts from him. And indeed it takes place thus in the sacrament; the faithful know how they eat Christ's flesh. Each receives his own part; he is eaten in parts and remains whole and entire. He is eaten in parts in the sacrament, remains whole and entire in heaven, remains whole and entire in your heart.

C. LXXI. The daily sacrifice is not a repetition of the Passion but a commemoration.

Likewise Paschasius, *On the Body and Blood of Christ*, [c. 9]. PART XXII. This offering is repeated daily, although Christ, having suffered once in the flesh, saved the world once through one and the same Passion of death, and rising from that death to life, "death will have no further dominion over him." The wisdom of God the Father assuredly foresaw this as necessary for many causes. First, because we sin daily, at least in sins without which mortal infirmity cannot live; because, although all sins were forgiven in baptism, the infirmity of sin nevertheless still remains in the flesh. Hence the Psalmist: "Bless the Lord, my soul, who is propitious to all your iniquities, who heals all your infirmities." And

therefore, because we fall daily, Christ is mystically immolated for us daily, and Christ's Passion is handed down in the mystery, so that he who by dying once had conquered death may daily remit through these sacraments of the body and blood the recurrent sins of offenses. Hence we pray, "Forgive us our debts," because if we say that we have no sin, we deceive ourselves and the truth is not in us.

Likewise. § 1. This mystery is also repeated for the commemoration of Christ's Passion, as he himself says: "As often as you do this, do it in commemoration of me. Therefore, as often as you receive this bread and drink this chalice, you will announce the Lord's death until he comes." It is not therefore to be understood thus: until Christ's death comes, because he now dies no more, but until the Lord himself comes to judgment. Meanwhile, however, Christ's death is always to be announced to posterity throughout the life of the age, so that they may learn with what charity he loved his own, who deigned to die for them; and all of us owe him a return of charity, because he first loved us for this purpose, when we were children of Gehenna, that we, now freed from death, might love him.

C. LXXII. The sacrament of the Lord's body and blood is celebrated not only under a figure but also in reality.

Likewise Augustine. Whether this mystical sacrament of the chalice takes place under a figure or under reality. The Truth says: "My flesh is truly food, and my blood is truly drink." Otherwise, how will this be great: "The bread that I will give is my flesh for the life of the world," unless it is true flesh? But because it is not right for Christ to be devoured by teeth, he willed this bread and wine in a mystery truly to be created as his flesh and blood potentially by the consecration of the Holy Spirit, and to be mystically immolated daily for the life of the world, so that, just as true flesh is created from the Virgin through the Spirit without intercourse, so through the same Spirit from the substance of bread and wine that same body of Christ may mystically be consecrated. Christ's body is both reality and figure: reality, while Christ's body and blood are effected by the power of the Spirit, in his power, from the substance of bread and wine; but figure is that which is perceived outwardly.

§ 1. This offering is repeated daily, although Christ suffered once, because we sin daily with sins without which mortal infirmity cannot live. And therefore, because we fall daily, Christ is mystically immolated daily for us.

§ 2. Within the Catholic Church, in the mystery of Christ's body, nothing greater is accomplished by a good priest, nothing less by an evil one, because it is effected not by the merit of the one consecrating but by the word of the Creator and the power of the Holy Spirit. For if it were by the priest's merit, it would in no way pertain to Christ. But now, just as he himself is the one who baptizes, so he himself is the one who through the Holy Spirit effects this flesh of his and passes into blood. Hence the priest also says: "Command," he says, "this to be carried by the office of your holy angel to your altar on high in the sight of your divine majesty." Why does he request that these things be carried into the light unless it is to be understood that they take place in that priesthood? Therefore this offering is blessed, through which we are blessed; enrolled, through which human beings are enrolled in heaven; ratified, through which we are reckoned in the inward parts of Christ; rational, through which we are stripped of bestial sense; acceptable, so that we who displease ourselves may through it be acceptable to his only-begotten Son. Nothing is more rational than that, because we have already received in baptism the likeness of his death, we should also receive the

likeness of his blood, so that neither reality may be lacking in the sacrament nor anything ridiculous be done by pagans, namely that we drink the gore of a slain human being. For if the disciples could not patiently bear what the Lord had said—"He who does not eat my flesh, etc."—if they said, "This is a hard discourse," how would unbelievers bear these things? It must be believed that the sacraments are confected in Christ's words. For by whose power they are created, by his word assuredly they are procreated into something better.

§ 3. All the other things that the priest says or the clergy of the choir sing are nothing other than praises and thanksgivings, or certainly supplications and petitions of the faithful. Hence the priest also says, first assuming the words of the Evangelists: "Who on the day before he suffered, etc." In this, therefore, that body is created.

C. LXXIII. In the blood of the lamb, Christ's blood, which now is truly received, was formerly prefigured.

Gregory in an Easter homily. What the blood of the lamb is, you have learned not now by hearing but by drinking. This blood is placed upon both doorposts when it is drawn not only by the mouth of the body but also by the mouth of the heart.

Likewise, [*Dialogues*, book IV, c. 58]. § 1. This saving victim restores to us through a mystery that death of the Only-begotten, who, although "rising from the dead, now dies no more; death will have no further dominion over him," nevertheless, living immortally and incorruptibly in himself, dies again in this mystery. His body too is received everywhere, his flesh is divided for the salvation of the people, his blood is poured no longer into the hands of unbelievers but into the mouths of the faithful. From this, therefore, let us consider what sort of sacrifice this is which for our absolution always imitates the Passion of the only-begotten Son. For who of the faithful can have doubt that at the very hour of immolation the heavens are opened at the priest's voice; that the choirs of angels are present in that mystery of Jesus Christ; that highest and lowest are associated; that one thing is made from invisible and visible things?

The same. § 2. At one and the same time and moment, he says, it is both carried away in heaven by the ministry of angels to be associated with Christ's body, and seen upon the altar before the priest's eyes.

And below. § 3. So great is the unity of the Church in Christ that everywhere there is one bread of Christ's body and one chalice of his blood. For the chalice which a Catholic priest sacrifices is no other than that which the Lord handed to the Apostles; because, just as the divinity of the Word of God is one and fills the whole world, so, although that body is consecrated in many places and on innumerable days, nevertheless there are not many bodies of Christ or many chalices, but one body of Christ and one blood with that which he assumed in the Virgin's womb and which he gave to the Apostles. For the divinity of the Word fills that which is everywhere and joins it and causes that, just as the divinity itself is one, so it is joined to Christ's body and his body is one in reality. Hence it is to be observed that whether one receives more or less from it, all equally receive Christ's body in its complete integrity, both all generally and each one particularly.

Likewise. § 4. It is called the mystery of faith because you ought to believe that our salvation consists there. For, providing for us, he gave this sacrament of salvation so that, because we sin daily and he now cannot die, through this sacrament we may attain remission of sins. For he himself is eaten and

drunk daily in reality, but remains whole, living, and immaculate; and therefore it is a great and fearful mystery, because one thing is seen and another understood. But since it is a mystery, why is it called body and blood? It has the figure of bread and wine by the Lord's action, because we do not have it as a custom to eat raw flesh and drink blood.

C. LXXIV. Although the figure of bread and wine remains after consecration, nevertheless nothing is there except Christ's body and blood.

Likewise Ambrose. "The Lord did all things whatsoever he willed in heaven and on earth." And because he willed it, so it was done. Thus, although the figure of bread and wine is seen, nevertheless after consecration there is nothing other than Christ's flesh and blood. The Truth himself says to the disciples: "This," he says, "is my flesh, for the life of the world." And, that I may speak more marvelously, it is plainly no other flesh than that which was born from Mary, suffered on the cross, and rose from the tomb; this, I say, is that very flesh. And therefore it is Christ's flesh which is still offered today for the life of the world, and when it is worthily received, eternal life is assuredly restored in us. Indeed, by this bread which we receive in the mystery, I assuredly understand that bread which was formed by the hand of the Holy Spirit in the Virgin's womb and baked by the fire of the Passion upon the altar of the cross. For the bread of angels was made the food of human beings, whence he himself says: "I am the living bread which descended from heaven," and likewise: "The bread that I will give is my flesh, for the life of the world." For from these two judgments it is openly given to be understood that this bread and that are not two, but one bread and one flesh, and undoubtedly one body is effected: truly that one, assuredly that one, which was assumed from the Virgin, which suffered and was buried, which also rose, ascended into heaven, sits at the right hand of God the Father, and is to come to judge the living and the dead.

C. LXXV. Although Christ is eaten daily, he nevertheless remains whole and living.

Likewise Augustine from a sermon on the Lord's words. "He who eats me lives because of me." Therefore, brothers, let us not fear to eat this bread lest perhaps we finish it and afterward find nothing to eat. Let Christ be eaten: once eaten he lives, because, having been killed, he rose; nor when we eat do we make parts from him. And indeed it takes place thus in the sacrament, and the faithful know how they eat Christ's flesh. Each receives his own part, whence by this grace they are also called parts. He is eaten in parts and remains whole and entire; he is eaten in parts in the sacrament and remains whole and entire in heaven; he remains whole and entire in your heart. For he was wholly with the Father when he came into the Virgin; he filled her and did not withdraw from him. He was coming into flesh so that human beings might eat him, and remained whole with the Father so that he might feed the angels.

C. LXXVI. It is permitted to no one to receive Christ's body according to itself.

Likewise Jerome on Leviticus. It is permitted to eat of this victim which is marvelously made in commemoration of Christ; but of that which Christ offered upon the altar of the cross, according to itself, it is permitted to no one to eat.

C. LXXVII. In the individual portions, individuals receive Christ whole.

The same in the sermon for the fifth Lord's day after Theophany. But individuals receive the Lord Christ, and in the individual portions he is whole; nor is he diminished among individuals, but furnishes himself whole in each.

C. LXXVIII. On the same matter.

Likewise Hilary. Where there is a part of the body, there is also the whole. The same rationale exists in the Lord's body as in the manna which preceded as its figure, concerning which it is said: "He who had gathered more did not have more, nor did he who had prepared less have less." Visible quantity is not to be appraised in this mystery, but the spiritual power of the sacrament.

C. LXXIX. Christ's body which is received is both figure in species and reality in substance.

The same. Christ's body which is received from the altar is a figure while bread and wine are seen outwardly, but reality while Christ's body and blood are believed inwardly in reality.

C. LXXX. At the altar we receive life-giving flesh made proper to the Word himself.

Likewise from the Creed of Ephesus. Therefore, we necessarily add this too. We celebrate in the churches the bloodless service of the sacrifice. And we are sanctified as participants in Christ's body and precious blood, receiving it not as common flesh, nor as the flesh of a sanctified man joined to the Word according to a unity of dignity, but as truly life-giving flesh made proper to the Word himself.

C. LXXXI. How manna and water from the rock are the same as our food and drink.

Likewise Augustine, [tractate XXVI on c. 6 of John]. The Apostle says: "They all ate the same spiritual food." Assuredly the same spiritual food, for a different bodily food, because they ate manna and we another; "and they all drank the same spiritual drink." They drank one thing and we another, but in visible species; nevertheless, it is the same in spiritual power.

C. LXXXII. That we receive the reality of the Lord's body and blood.

Likewise Hilary, book VIII *On the Trinity*. PART XXIII. The Father in Christ and Christ in us cause us to be one in these things. If Christ truly assumed the flesh of our body, and that man truly is Christ, and we truly receive under a mystery the flesh of his body, and through this we will be one because the Father is in him and he in us, how is a unity of will asserted, when the natural property through the sacrament is a perfect sacrament of unity? One must not speak of these things by human or worldly sense, nor through a violent and imprudent preaching of heavenly sayings must the perversity of an alien and impious understanding be wrested from their soundness. For unless we learned from him the things we say concerning Christ's natural reality in us, we would speak foolishly and impiously. For he himself says: "My flesh is truly food, and my blood is truly drink. He who eats my flesh and drinks my blood remains in me, and I in him." No place for doubt is left concerning the reality of the flesh and blood. For now, both by the profession of the Lord himself and

by our faith, it truly is flesh and truly is blood; and these things, received and drunk, cause both that we are in Christ and that Christ is in us. Therefore he himself is in us through the flesh.

§ 1. But that through the sacrament of the communicated flesh and blood we are in him, he himself testifies, saying: "But you will see me, because I live and you will live, because I am in my Father, and you in me, and I in you." If he wished only a unity of will to be understood, why did he set forth a certain degree and order of the unity to be consummated, unless so that he might be believed to be in the Father through the nature of divinity, we contrariwise to be in him through his bodily birth, and he in turn to be in us through the mystery of the sacraments, and thus a perfect unity through the mediator might be taught, since, with us remaining in him, he remained in the Father, and remaining in the Father remained in us, and so we advanced toward unity, since, as he who is naturally in him according to birth exists, we too would naturally be in him, while he naturally remained in us?

§ 2. But that this unity is naturally in us he himself testified thus: "He who eats my flesh and drinks my blood remains in me, and I in him." For no one will be in him except one in whom he himself has been, nevertheless having in himself the assumed flesh of him who had assumed his flesh. Likewise: "As the living Father sent me, and I live through the Father, so he who eats my flesh will himself live through me." As he lives through the Father, in the same manner we live through his flesh.

§ 3. This, therefore, is the cause of our life: that through the flesh we have Christ remaining in us, and will live through him by the condition by which he lives through the Father. Therefore, if according to the flesh we naturally live through him, that is, having attained the nature of his flesh, how does he not naturally according to the Spirit have the Father in himself, since he himself lives through the Father?

Likewise. § 4. But these things were recalled by us for this reason: because heretics, falsely claiming only a unity of will between the Father and the Son, were using the example of our unity with God, as though, with us united to the Son and through the Son to the Father only by obedience and the will of religion, no natural property of communion through the sacrament of flesh and blood were granted; although both through the honor of the Son given to us, and through him remaining carnally in us, and us bodily in him, with us inseparably united, the mystery of true and natural unity is to be proclaimed.

The same. § 4. Christ's body which is received from the altar is a figure while bread and wine are seen outwardly, but reality while Christ's body and blood are inwardly believed in reality.

C. LXXXIII. Why water is mixed with wine in the sacrifice.

Likewise Ambrose in book V *On the Sacraments*, [c. 1]. PART XXIV. Wine and water are placed in the chalice. But you say: How, then, did Melchizedek offer bread and wine? What does the admixture of water mean? "But they drank from the rock following them; and the rock was Christ." Not an immobile rock, which followed the people. And you, drink, so that Christ may follow you. See the mystery. Moses: this is the Prophet. The rod: this is the word of God. The priest touches the rock with the word of God, and water flows, and the people of God drink. Water overflows in the chalice; it springs unto eternal life.

Likewise. Receive this too. § 2. From his side flowed water and blood: water, that it might cleanse; blood, that it might redeem. Why from the side? Because whence the fault, thence grace; fault

through a woman, grace through Christ.

Likewise, [c. 3]. § 3. Hear the Psalm. See how suitable it is for the heavenly sacraments: "The Lord shepherds me, and nothing will be lacking to me, etc. Your rod and your staff, etc." The rod is command; the staff is the Passion; the eternal divinity of Christ and the temporal Passion. The former created; the latter redeemed. "You have prepared a table in my sight, and my inebriating cup, how splendid it is."

Likewise. § 4. As often as you drink, you receive remission of sins and are inebriated by the Spirit. Hence the Apostle also says: "Do not be inebriated with wine, in which there is wantonness, but be filled with the Holy Spirit." Likewise: Splendid inebriation, which operates sobriety of mind.

Likewise, [c. 4]. § 5. "Your will be done, as in heaven and on earth. Give us today our daily bread." By Christ's blood all things either in heaven or on earth have been pacified. Heaven has been sanctified; the devil has been cast down to where the human being whom he deceived moves.

§ 6. I told you that before Christ's words what is offered is called bread. When Christ's words have been brought forth, it is no longer called bread but body. Why, therefore, in the Lord's Prayer does he say, "Our bread"? He indeed said bread, but *epiousion*, that is, supersubstantial.

C. LXXXIV. We eat and drink Christ's true flesh and true blood.

The same in book VII. PART XXV. Just as the Lord Jesus Christ is the true Son of God—not as human beings are through grace, but as Son from the Father's substance—so the flesh of Christ which we receive is true, as he himself said, and his blood is true drink.

Likewise. § 1. "I am," he says, "the living bread that descended from heaven." But the flesh did not descend from heaven. How, then, did the living bread descend from heaven? Because the same Lord Jesus is a participant in divinity and in the body. And you who receive the flesh participate in his divine substance in that nourishment.

C. LXXXV. In the sacrifice we receive not bodily but spiritual food.

Likewise in the book *On the Mysteries*, [c. 9]. In that sacrament Christ is, because it is Christ's body. Therefore it is not bodily but spiritual food. Hence the Apostle also says concerning its type that our fathers ate the same spiritual food. For the body of God is a spiritual body; Christ's body is the body of the divine Spirit.

C. LXXXVI. We offer upon the altar the flesh assumed by Christ and the transfigured body.

The same in the sermon *On Abel and Cain*. If you believe that flesh was assumed by Christ and offer the transfigured body upon the altar, but nevertheless do not distinguish the nature of the Word and of the body, it is said to you: "If you offer rightly but do not divide rightly, you have sinned."

C. LXXXVII. At the Supper Christ was both guest and banquet.

Likewise Jerome to Hedibia, [question II]. Moses did not give you the true bread, but the Lord Jesus himself is both guest and banquet, himself eating and being eaten.

C. LXXXVIII. In the reality of his body and blood Christ presented to his disciples what Melchizedek offered sacramentally.

Likewise on Matthew, [book IV on c. 26]. "Take and eat. This is my body." After the typical Passover had been completed and he had eaten the flesh of the lamb with the Apostles, he took bread, which strengthens the human being, and passed to the true sacrament of the Passover, so that, just as Melchizedek had done in his prefiguration when offering bread and wine, he too might present it in the reality of his body and blood.

C. LXXXIX. Christ is both priest and sacrifice.

The same in the book *On the Lord's Members*. The Son of God is called the priest of God the Father according to the humanity in which he offered himself to God as an acceptable sacrifice for us, so that he himself who is the sacrifice is the priest.

C. XC. The believing Jews drank the blood that they shed upon the cross.

Likewise Augustine, *On the Usefulness of Doing Penance*. Then Peter announced to them that the one whom they had crucified was to be worshiped, so that, believing, they might now drink his blood which, raging, they had shed.

C. XCI. The body that was assumed from the Virgin is received by the faithful.

The same in the letter to Irenaeus. That bodily manna is now the reality of so great a miracle because what is perfect has come; but the perfect thing is the bread from heaven, the body from the Virgin.

C. XCII. We daily eat Christ's true body and drink his true blood.

The same, in the second homily on Psalm 33. The Jews approached Jesus to crucify him; let us approach to receive his body and blood.

Likewise. § 1. Truly great is God and great his mercy, who gave us his body to eat, in which he endured so much, and his blood to drink.

Likewise on Psalm 27, to the Jews. § 2. Now drink securely the blood that you shed.

On Psalm 75. § 3. The very blood which they shed through madness, they drank through grace.

On Psalm 28. § 4. From Mary's flesh he received flesh, and he gave that very flesh to be eaten for salvation. But no one eats that flesh unless he has first adored it.

On Psalm 33. § 5. "David was carried in his own hands." No one is carried in his own hands. We do not find how this is to be understood literally in David himself, but we find it in Christ. For Christ was carried in his own hands when, commending his own body, he said: "This is my body." For that body was carried in his own hands.

The same, tractate 35 on John. § 6. Until they drank the blood that they had shed, they despaired.

The same on Psalm 54. § 7. The Jews were fed as though from the Lord's punishment, and we are fed from the Lord's cross because we eat his body. Therefore the impious have their feasts, and the pious have theirs. "Blessed are those who hunger and thirst for justice."

C. XCIII. The Eucharist ought always to be prepared for the sick.

Likewise from the Council of Worms. PART XXVI. Let a presbyter always have the Eucharist prepared so that, when anyone becomes ill, he may immediately communicate him, lest he die without communion.

C. XCIV. The penance of one who does not guard the sacrifice well.

Likewise from the Council of Orléans. PART XXVII. One who has not guarded the sacrifice well, and a mouse or some other animal has eaten it, shall do penance for forty days. But one who has lost it in the church, or a part of it has fallen and has not been found, shall do penance for thirty days.

C. XCV. The sacred mysteries shall not be entrusted to actors.

Cyprian, greetings to his fellow bishop Eucratius, [book I, letter 10]. PART XXVIII. On account of your affection you judged that I should be consulted, dearest brother, concerning what seems to me regarding that actor and magician established among you, who still perseveres in the disgrace of his art and, as master and teacher not of boys to be instructed but of boys to be destroyed, also insinuates to others what he learned wickedly: whether sacred communion ought to be given to such persons together with the other Christians, or he ought to communicate with you. I judge it to accord neither with the divine majesty nor with evangelical discipline that the modesty and honor of the Church be defiled by so shameful and infamous a contagion.

C. XCVI. After conversion, the grace of communion is not to be denied.

Likewise from the Third Council of Carthage, [c. 35]. Let grace or reconciliation with God not be denied to stage performers, actors, and other persons of this kind, or to apostates who have been converted or returned.

C. XCVII. A presbyter shall not celebrate Mass upon an altar on which a bishop celebrated that same day.

Likewise from the Council of Urbinum. Let no presbyter presume to celebrate another Mass on that day upon an altar at which the bishop sang Mass.

Distinction III

GRATIAN.

C. I. The times for abstaining from work are to be announced to laypersons at Mass.

Likewise from the Council of Lyon. PART I. It is to be proclaimed so that they may know the times for abstaining from work throughout the year, that is, every Lord's day from evening to evening, lest they be seized by Judaism. But these are the days for abstaining from work throughout the year: the Nativity of the Lord; Saint Stephen; Saint John the Evangelist; the Holy Innocents; Saint Sylvester; the octave of the Lord's Theophany; the Purification of Saint Mary; holy Easter with the whole week; the Rogations for three days; the Ascension of the Lord; the holy days of Pentecost; Saint John the Baptist; the twelve Apostles, and especially Saints Peter and Paul, who illuminated the world by their preaching; Saint Lawrence; the Assumption of Saint Mary; the Nativity of Saint Mary; the Dedication;

Saint Michael the Archangel; the dedication of any oratory; All Saints; and Saint Martin; and those feasts which individual bishops with the people have approved in their episcopal sees, which are to be proclaimed only to neighbors dwelling nearby, not generally to all. But the remaining feasts throughout the year are neither to be compelled to abstain from work nor prohibited. But when an appointed fast has been announced, let it be observed by all.

C. II. On the solemnities of the saints, the peoples ought to attend to divine offices, not dances or songs.

Likewise from the Fourth Council of Toledo, [c. 23]. It is an irreligious custom which the common people are accustomed to practice during the solemnities of the saints. The peoples, who ought to attend the divine offices, keep watch over shameful dances and songs, not only singing evil things but also making a din through the offices of religious persons. So that this may be driven away from all provinces, it is entrusted by the holy council to the care of priests and judges.

C. III. Litanies shall be celebrated for three days before the Lord's Ascension.

Likewise from the Council of Orléans, [I, c. 29]. It was resolved that the Rogations, that is, the litanies, be celebrated before the Lord's Ascension in such a way that the three-day fast sent before be broken on the solemnity of the Lord's Ascension. During this three-day period, let male and female servants be released from work so that the whole people may assemble in greater number. During this three-day period, let all abstain and use Lenten foods.

C. IV. A bishop shall not be absent from church on the Lord's day.

Likewise from the same, [c. 33]. A bishop, if he has not been impeded by infirmity, ought not to be absent on the Lord's day from the church to which he is nearest.

C. V. Citizens are not permitted to celebrate these days at a country estate.

Likewise from the same, [c. 27]. Let no citizen ever be permitted to celebrate the solemnity of Easter, the Nativity of the Lord, or Lent at a country estate, except one whom infirmity is proved to have detained.

C. VI. Lent is to be celebrated before the solemnity of Easter.

Likewise from the same, [c. 26]. It was decreed for all priests that before the solemnity of Easter not Quinquagesima but Quadragesima is to be observed.

C. VII. It is not permitted to break the fast on the fifth day of the final week of Lent.

Likewise from the Council of Pope Martin, [c. 50]. Let it not be permitted, brothers, to break the fast on the fifth day of the final week and dishonor the whole of Lent, but, sincerely abstaining, to pass through the whole of Lent.

C. VIII. On the same matter.

Likewise from the Council of Laodicea, [c. 50]. One ought not to dissolve the fast in Lent on the fifth day of the final week and dishonor the whole of Lent, but to fast through all the days and use foods suitable for abstinence, that is, drier foods.

C. IX. Except on the Lord's days, the fast shall not be broken in Lent.

Likewise from the Council of Agde, [c. 12]. It was resolved that all churches, except on the Lord's days, fast in Lent even on the Sabbath by priestly prayer and the communion of discretion.

C. X. The knees shall be bent in prayer neither on the Lord's day nor during the days of Pentecost.

Likewise from the Council of Nicaea, [c. 20]. Since there are some who bend their knees in prayer on the Lord's day and during the days of Pentecost, it was therefore established by the holy synod—because a harmonious and fitting custom is to be guarded throughout all the churches—that, standing in prayer, we render vows to the Lord.

C. XI. At what time one is to abstain from eating meats.

Likewise Leo IV. PART II. Concerning the eating of meats, among us the most ancient and irreproachable tradition is always to be maintained: that from the end of the meal which takes place at the beginning of the night of the fourth day, which dawns on the fourth day, until the dawn of the fifth day; and similarly from the meal of the night of the sixth day, which dawns on the sixth day, fasting is not unskillfully to be prolonged until the light of the Sabbath, for as much of the portion of the day as someone prefers or ought to fast.

C. XII. Neither is one to abstain from work on the Sabbath, nor is bathing prohibited on the Lord's day.

Likewise Gregory to his most beloved citizens of Rome, [book XI, letter 3]. PART III. It has come to me that certain persons of a perverse spirit have sown among you some depraved things opposed to the holy faith, such that they prohibited any work from being done on the Sabbath day. What else shall we call them except preachers of Antichrist? He, when he comes, will cause both the Sabbath day and the Lord's day to be guarded from all work. For because he feigns that he dies and rises, he wishes the Lord's day to be held in veneration; and because he compels the people to Judaize, so that he may recall the exterior rite of the law and subject the perfidy of the Jews to himself, he wishes the Sabbath to be cultivated.

§ 1. Another thing also has been reported to me: that it was preached to you by perverse persons that no one ought to bathe on the Lord's day. And indeed, if someone desires to bathe for wantonness and pleasure, we do not concede that this be done on any other day either. But if for bodily necessity, we do not prohibit this even on the Lord's day.

C. XIII. Out of reverence for the Lord's burial, we ought to fast on the Sabbath.

Likewise Pope Innocent, [letter I to Decentius, c. 4]. PART IV. A most evident rationale demonstrates that one is to fast on the Sabbath. For if we celebrate the Lord's day not only at Easter on account of

the venerable resurrection of our Lord Jesus Christ, but also frequent the image of that day during each week, and just as we fast on the sixth day on account of the Lord's Passion, we ought not to omit the Sabbath, since it appears enclosed between the sorrow and joy of that time. For it is certainly established that during these two days the Apostles were both in grief and hid themselves for fear of the Jews. And there is assuredly no doubt that they fasted during the two days mentioned, to such an extent that the tradition of the Church holds that the sacraments are not celebrated at all during these two days. This form also is to be maintained during each week because the commemoration of that day is always to be celebrated. But if they think one is to fast once and on one Sabbath, then the Lord's day and the sixth day will assuredly also be celebrated once, at Easter.

C. XIV. A fast is not to be celebrated on the Lord's day or the fifth day.

Likewise Pope Miltiades, [to the Bishops of Spain, c. 3]. PART V. No one ought to celebrate a fast on the Lord's day or the fifth day, so that a true and not false distinction may be maintained between the fast of Christians and gentiles, and of those who truly believe and unbelievers and heretics.

C. XV. On the same matter.

Likewise from the Council of Saragossa, [c. 2]. Let no one fast on the Lord's day from fear or persuasion; nor during the days of Lent let the faithful be absent from the churches or inhabit the hiding places of chambers and mountains, those who persevere in suspicious practices; but let them guard the example and precept of the priests and not assemble at others' country estates for the sake of holding assemblies. It was said by all the bishops: Let one who has committed this be anathema.

C. XVI. The fasts of the fourth and sixth days are not to be broken.

Likewise from the sayings of Saint Apollonius. PART VI. The lawful fasts, namely of the fourth and sixth days, are not to be broken unless there is some great necessity, because on the fourth day Judas contemplated the betrayal of the Lord, and on the sixth day the Savior was crucified. Therefore, one who without necessity breaks the established fasts on these days will appear either to betray the Savior with the betrayer or crucify him with those crucifying. But on the Lord's day nothing else is to be done except to attend to God. Let no work be carried out on that holy day; rather, let that day be passed only in hymns, psalms, and spiritual songs.

C. XVII. On the fifth day of the final week of Lent, penitents shall receive remission.

Likewise Innocent, [letter I to Decentius, c. 7]. PART VII. Concerning penitents who perform penance either for graver offenses committed or for lighter ones, if no sickness intervenes, the custom of the Roman Church demonstrates that remission is to be given to them on the fifth day before Easter.

§ 1. But it belongs to the priest to judge concerning the weight of the offenses to be appraised, so that he attends to the confession of the penitent and to the weeping and tears of the one correcting himself.

§ 2. Certainly, if anyone falls into sickness and reaches the point of desperation, release is to be granted to him before the time of Easter, lest he depart from the world without communion.

C. XVIII. Each year on the fifth day of the final week of Quinquagesima, new chrism shall be confected.

Likewise Pope Fabian to the Eastern Bishops, [letter II]. PART VIII. Among other things inserted in your letters, we found that certain bishops of your religion depart from your order and ours and do not confect chrism each year at the Supper of the Lord. But those who devise such things err, and dare to do these things while thinking with an insane rather than upright mind.

§ 1. For just as the solemnity of that day itself is to be celebrated each year, so the confection of that holy chrism is to be performed each year and renewed from year to year, and it is to be handed to the faithful, because it is a new sacrament and is to be renewed each year on the aforesaid day, and the old chrism is to be burned in the holy churches. We received these things from the holy Apostles and their successors, and command that they be held by you.

C. XIX. The feast of the finding of the Lord's cross shall be observed by all.

Likewise Pope Eusebius, [letter III]. PART IX. We command you solemnly to celebrate, on the aforesaid day of the Kalends, the feast of the finding of the cross of our Lord Jesus Christ, which was recently found on the fifth day before the Nones of May while we held the governance of the holy Roman Church.

C. XX. Why it was established that water sprinkled with salt is to be sanctified.

Likewise Pope Alexander, fifth from Peter, [letter I, c. 5]. PART X. We bless water sprinkled with salt for the peoples, so that all who are sprinkled with it may be sanctified and purified. And we command that this be done by all priests. For if the ash of a heifer, when sprinkled, sanctified and cleansed the people, much more does water sprinkled with salt and consecrated by divine prayers sanctify and cleanse the people. And if through salt sprinkled by the prophet Elisha the sterility of the water was healed, how much more does salt consecrated by divine prayers remove the sterility of human affairs, sanctify and purge the defiled, multiply other goods, turn away the snares of the devil, and defend human beings from the deceits of phantasms?

C. XXI. Holy Easter shall be celebrated only on the Lord's day.

Likewise Pope Pius, ninth from the Apostle Peter, in the first of his decretals. We wish you to know that the Lord's Easter is to be celebrated annually on the Lord's day. For in these times Hermas, a teacher of faith and Scripture, shone among us. And although we celebrated Easter on the aforesaid day, nevertheless, because some doubted concerning it, an angel of the Lord appeared to the same Hermas in the form of a shepherd, to strengthen their souls, and commanded him that the Lord's Easter be celebrated by all on the Lord's day. Hence we too establish by apostolic authority that all ought to observe the same things, because we also observe the same, nor ought you to depart from the head in any manner.

C. XXII. Holy Easter shall be celebrated only on the Lord's day.

Likewise Pope Victor, thirteenth from Peter, in his first decretal. Our predecessors have already established that the solemnity of holy Easter ought to be celebrated on the Lord's day, and we

command that it be solemnly celebrated on that same day, because it is not fitting that the members disagree with the head or act otherwise. But let that feast be celebrated from the fourteenth moon of the first month through the twenty-first day of the same month.

§ 1. At the same time Catholic baptism is also to be celebrated. But nevertheless, if it is necessary or danger of death threatens, let gentiles coming to the faith, in whatever place or moment it occurs, whether in a river, the sea, or springs, be baptized, provided that they are made illustrious by the confession of Christian belief. They themselves must also attend with the greatest care to what they promised in baptism, lest they be found not unbelieving but faithful. But those who are sprinkled with the mark of unbelief are made infamous and are by no means reckoned among the faithful.

§ 2. These statutes ought not to be torn away by any dishonesty or changed by any novelty, because the rationale of secular causes is one thing, that of divine causes another.

C. XXIII. On the same matter.

Likewise from the Fourth Council of Carthage, [c. 65]. The solemnity of Easter is to be celebrated on one day and at one time.

C. XXIV. The days of Easter and of the council shall be made known to all by the endorsement of letters of form.

Likewise from the Fifth Council of Carthage, [c. 7]. It was resolved that the day of venerable Easter be made known to all by the endorsement of letters of form, but that the day of the council be observed on the eleventh day before the Kalends of November. It is also to be written to the primates of each of the provinces that, when they assemble councils among themselves, they not impede this day.

C. XXV. When all things have been established in council, the coming Easter shall be announced.

Likewise from the Second Council of Braga, [c. 9]. It was resolved that, after all things have been ordered in the council of priests, this is to be observed in every way: that the metropolitan bishop make known on what day of the Kalends or at what moon Easter of that approaching year is to be observed. The other bishops or remaining clergy, noting this in a brief writing, shall each announce it to the people in his own church after the Gospel reading on the approaching day of the Nativity of the Lord.

C. XXVI. Easter shall be celebrated on one day and at the same time throughout the whole world.

Likewise from the First Council of Arles, which Pope Sylvester confirmed, [c. 1]. Concerning the observance of the Lord's Easter, we establish that it be observed on one day and at one time throughout the whole world, and that letters be directed to all according to custom.

C. XXVII. Concerning images of saints that are not to be violated.

Likewise Gregory to Serenus, Bishop of Marseille, [book IX, letter 9]. PART XII. It had been reported to us that, inflamed by inconsiderate zeal, you broke images of saints under this supposed excuse: that they ought not to be adored. And indeed, because you had forbidden them to be adored, we

praised you altogether; but we reproved you for having broken them. Tell me, brother: from what priest was it ever heard that he did what you did? For it is one thing to adore a picture, another to learn through the history in a picture what is to be adored. For what Scripture furnishes to those who read, a picture furnishes to the unlearned who behold, because in it the ignorant see what they ought to follow; in it those who do not know letters read. Hence a picture is especially in place of reading for the gentiles.

C. XXVIII. Images of saints are a memory and recollection of past things.

Likewise from the Seventh Synod, [action 6]. Christians do not call venerable images gods, nor serve them as gods, nor place hope of salvation in them, nor expect future judgment from them; but for the memory and recollection of the prototypes they venerate and adore them, yet do not serve them with divine worship, nor any creature.

C. XXIX. Christ is to be depicted not in the appearance of a lamb, but in that of a human being.

Likewise Pope Hadrian to Patriarch Tarasius, [in action II of the same Seventh Synod]. PART XIII. I receive the holy Sixth Synod with all its canons, in which it is said: In certain depictions of holy images a lamb is portrayed as pointed out by the finger of the Forerunner; this was received as a figure of grace, showing us beforehand through the law of Moses the true Lamb, our Lord Jesus Christ. Therefore, bidding farewell to the ancient figures and shadows handed down to the holy Church for the prefiguration of the truth, we prefer grace and truth, and receive it as the fulfillment of the law. We therefore command that henceforth the true Lamb, our Lord Jesus Christ, be depicted also in images according to his human form, in place of the ancient lamb.

C. XXX. The faith of the Trinity and Unity is to be preserved inviolate.

Likewise Augustine in book I *On the Trinity*, [c. 4]. All those whom I have been able to read, who before me wrote about the Trinity which is God—Catholic expositors of the divine books of the Old and New Testaments—have intended to teach this according to the Scriptures: that the Father, Son, and Holy Spirit, being of one and the same substance in inseparable equality, intimate the divine unity, and therefore are not three Gods but one God; although the Father begot the Son, and therefore the Son is not he who is the Father; and the Son was begotten by the Father, and therefore the Father is not he who is the Son; and the Holy Spirit is neither the Father nor the Son, but only the Spirit of the Father and the Son, himself also coequal with the Father and the Son and pertaining to the unity of the Trinity. Nevertheless, it was not this same Trinity that was born of the Virgin Mary, crucified and buried under Pontius Pilate, rose on the third day, and ascended into heaven, but the Son alone; nor was it this same Trinity that descended in the appearance of a dove upon Jesus when he was baptized, or, on the day of Pentecost after the Lord's ascension, when a sound was made from heaven as of a rushing mighty wind and divided tongues as of fire, but the Holy Spirit alone; nor was it this same Trinity that said from heaven, "You are my Son," whether when he was baptized by John or upon the mountain when the three disciples were with him, or when the voice sounded saying, "I have glorified it and will glorify it again," but it was the Father's voice alone that was made to the Son, although the Father, Son, and Holy Spirit, just as they are inseparable, so also work inseparably.

Distinction IV

GRATIAN.

C. I. No one is saved without the visible sacrament and invisible faith.

The same on John. PART I. The visible sacrament of water is necessary for the washing of the visible body, just as the teaching of invisible faith is necessary for the sanctification of the invisible soul. The same. § 1. A human being is reborn of water, the visible sacrament, and of spirit, namely invisible understanding, so that he may receive the symbol of baptism visibly and perceive the spiritual understanding of that symbol. Or: of visible water and the Holy Spirit.

C. II. In baptism concupiscence is extinguished, not so that it does not exist, but so that it does not harm.

The same in book I *On the Baptism of Infants*, [c. 39]. Through Christ's baptism this is accomplished: that the flesh of sin is emptied.

It is not, however, emptied in such a way that innate concupiscence does not exist in the flesh, but so that it does not harm. For if after baptism they reach the natural age, there they have something against which to struggle and which, with God's help, to overcome, if they have not received grace in vain. For not even to adults is this granted in baptism—except perhaps by a miracle of God—that the law of sin, resisting the law of the mind, is utterly extinguished and does not exist; rather, whatever was said, done, or thought by a human being while his mind served in subjection to this concupiscence is wholly abolished and regarded as though it had not been done.

C. III. One who is conceived from a man and a woman is born with original sin and is not saved without baptism.

The same to Peter the Deacon, [c. 26]. Hold most firmly and in no way doubt that every human being who is conceived through intercourse between a man and a woman is born with original sin, subjected to impiety and subject to death, and on this account is born naturally a child of wrath, concerning which the Apostle says: "For we were by nature children of wrath, like the rest." From this wrath no one is freed except through faith in the mediator, the man Jesus Christ. § 1. Hold most firmly that not only human beings who use reason, but also little children—whether they begin to live in their mothers' wombs and die there, or, already born from their mothers, pass from this world without the sacrament of baptism, which is given in the name of the Father and of the Son and of the Holy Spirit—are to be punished with eternal fire; because, although they have no sin of their own action, they have nevertheless drawn the condemnation of original sin from birth through carnal conception.

C. IV. On the same matter.

Likewise John Chrysostom. No one can receive the grace of heavenly life unless he has been cleansed from every stain of sin through the confession of penance, through the gift of the saving baptism of our Lord and Savior Jesus Christ, who is blessed for ages of ages.

C. V. Just as sins are now remitted in baptism, so formerly they were remitted in circumcision.

Likewise Gregory in the *Moralia,* [book IV, c. 2]. What the water of baptism effects among us, among the ancients either faith alone effected for little children, or the power of sacrifice for adults, or, for those who came forth from the stock of Abraham, the mystery of circumcision.

C. VI. Original sin is now remitted in baptism; formerly it was remitted in circumcision.

Likewise Augustine to Valerius, *Against Julian,* [book II, c. 11]. From the time circumcision was instituted among the people of God—which was then the seal of the faith of God's righteousness—it availed little children for the sanctification of cleansing from original and ancient sin, just as baptism also began to avail for the renewal of the human being from the time it was instituted.

C. VII. The faith of those presenting them profits little children.

The same in book III *On Free Choice,* [c. 23]. Human beings are accustomed to investigate what benefit the sacrament of Christ's baptism affords little children, since after receiving it they often die before they have been able to know anything of themselves. In this matter it is believed with sufficient piety and correctness that the faith of those by whom the little child is presented for consecration profits him. And the authority of the Church commends this, so that from it each person may perceive how his own faith profits him, when it is beneficial also for the benefit of others who do not yet have power of their own.

C. VIII. Through faith and baptism we are justified from sins.

The same *On the Baptism of Infants,* [book I, cc. 32 and 33]. The Son of God assumed the flesh of sin and punishment without fault, so that in the flesh of sin both fault and punishment might be dissolved. Therefore, through faith in him and through his baptism, a human being is freed from sin through justification and from death through resurrection. § 1. Even baptized little children are counted among believers through the power of the sacrament and the response of those presenting them. But those who have not been baptized are judged among unbelievers from the Gospel of John: "Unless someone is reborn of water and the Holy Spirit, he cannot enter into the kingdom of God."

C. IX. Through the water of baptism an earthly human being becomes heavenly.

Likewise Ambrose in book I *On the Sacraments,* [cc. 4 and 5]. Through the water of baptism there is a passage from earthly things to heavenly things. Therefore *Pascha* is called a passage; this passage is from sin to life, from fault to grace, from defilement to sanctification. He who passes through this water does not die but rises again. § 1. Not every water heals, but that which has the grace of Christ. The element is one thing, the consecration another. Water does not heal unless the Holy Spirit descends and consecrates that water, as it is read that, when Christ was giving the form of baptism, he came to John, and John said to him: "I ought to be baptized by you, and you come to me?" Jesus answered: "Thus it befits us to fulfill all righteousness." See what all righteousness is. Christ descended to baptism not so that the flesh which he assumed from our condition might be cleansed. For a washing away of sin was not necessary for Christ, who committed no sin; but it was necessary for us, who were liable to sin. § 2. Christ descended; the Holy Spirit also descended. But why did

Christ descend first and the Holy Spirit afterward, when the form and use of baptism have it that the font is first consecrated and then the one to be baptized descends? § 3. Christ, however, descended first, and the Holy Spirit followed, so that he might never seem himself to need the mystery of sanctification, but so that he himself might sanctify and the Holy Spirit also might sanctify.

C. X. The water of baptism would not cleanse sins unless it had been sanctified by the touch of the Lord's body.

Likewise John Chrysostom. The waters of baptism could never cleanse the sins of believers unless they had been sanctified by the touch of the Lord's body.

C. XI. General baptism is to be celebrated only on the holy Sabbath of Easter and Pentecost.

Likewise Pope Siricius to Himerius of Tarragona, [letter I]. PART II. It is presumed upon not by reason of any authority but by temerity alone that innumerable peoples are baptized indiscriminately and freely on the Nativity of Christ, or Epiphany, and also on the feasts of the Apostles or martyrs, although the Lord's Easter, together with its Pentecost, specially vindicates this privilege for itself among us and among all the churches.

C. XII. On the same matter.

Likewise Pope Leo to all the bishops established throughout Sicily, [letter IV, c. 5]. Two times, namely Easter and Pentecost, have been fixed by the Roman Pontiff as lawful for baptizing. Hence, because it is most manifest that these two times of which we have spoken are lawful for those chosen to be baptized in the Church, we admonish your Charity not to mingle any other days with this observance.

C. XIII. Why baptism is celebrated at the aforesaid times.

The same, [in the same letter, c. 3]. Precisely in the death of the crucified one and in his resurrection from the dead, the power of baptism founded a new creature from the old, so that both the death and life of Christ might work in those being reborn, as the Apostle says: "Or do you not know that all of us who have been baptized in Christ Jesus have been baptized in his death? For we were buried with him through baptism into death, so that, just as Christ rose from the dead through the glory of the Father, so we also may walk in newness of life. For if we have been made planted together in the likeness of his death, we shall be so also in the resurrection," and the rest, which the teacher of the gentiles discussed more fully to commend the sacrament of baptism. Thus it would appear that, from the spirit of this teaching, for the sons of human beings who are to be regenerated and adopted as sons of God, that day and time was chosen on which, through the likeness and form of the mystery, the things done in the members accord with those accomplished in the head himself: while, in the rule of baptism, both death intervenes through the slaying of sin, and triple immersion imitates the three-day burial, and the raising from the waters is a likeness of one rising from the tomb. Therefore, the very character of the work teaches that the lawful day for the general celebration of grace is that on which both the power of the gift and the form of the action arose. § 1. For confirmation of this matter, it is of very great force that the Lord Jesus Christ himself, after he rose from the dead, delivered to his disciples—in whom all the prelates of the churches were being taught—both the form and the power of baptizing, saying: "Going, teach all nations, baptizing them in the name of the

Father and of the Son and of the Holy Spirit." He could certainly have instructed them about this even before the Passion, had he not wished it to be understood particularly that the grace of regeneration began from his resurrection. § 2. Added to this observance also is the sacred solemnity of Pentecost from the coming of the Holy Spirit, which depends upon the turning point of the Paschal feast; and while other feasts pertain to other days, this one always falls upon the day distinguished by the Lord's resurrection. It extends, as it were, the hand of assisting grace and invites those whom either the distress of sickness, the length of a journey, or the difficulty of navigation excluded from Easter day, so that, impeded by whatever necessities, they may obtain the effect of their desire by the gift of the Holy Spirit. § 3. That we defend this not from our own persuasion but preserve it from apostolic authority, we prove by a sufficiently fitting example, following blessed Peter the Apostle, who, on the very day when the coming of the promised Holy Spirit filled the whole number of believers, consecrated in the washing of baptism a people of three thousand converted by his preaching. Holy Scripture, which contains the Acts of the Apostles, teaches this in a faithful history, saying: "When they had heard these things, they were pierced in heart and said to Peter and the remaining Apostles: What shall we do, men and brothers? But Peter said to them: Do penance, and let each one of you be baptized in the name of our Lord Jesus Christ for the remission of your sins, and you shall receive the gift of the Holy Spirit."

[C. XIV.]

Likewise. But if anyone thinks that the feast of Epiphany—which in its proper order is to be venerated with due honor—has the privilege of baptism because some think that on that day the Lord approached the baptism of Saint John, let him know that the grace of that baptism was one thing and its rationale another, and that it did not pertain to the same power by which those are reborn through the Holy Spirit of whom it is said: "Who were born not of blood, nor of the will of the flesh, nor of the will of a man, but of God." For the Lord, needing no remission of sin and seeking no remedy of rebirth, willed to be baptized just as he also willed to be circumcised and an offering to be presented for cleansing, so that he who was made of a woman, as the Apostle says, might be made under the law, which he had come not to dissolve but to fulfill and, by fulfilling it, to bring it to an end, just as the Apostle proclaims, saying: "For Christ is the end of the law unto righteousness for everyone who believes." But he founded in himself the sacrament of his baptism, because, holding primacy in all things, he taught that he was the beginning, and he then sanctioned the power of regeneration when the blood of redemption and the water of baptism flowed from his side.

C. XV. Catechumens are to be baptized on the solemnities of Easter and Pentecost.

Likewise from the Council of Girona, [c. 4]. Concerning the baptizing of catechumens, it was decreed that they are to come for baptism at the solemnity of Easter or Pentecost; on other solemnities only the sick ought to be baptized.

C. XVI. When necessity compels, it is permitted to baptize at any time.

Likewise Pope Leo, [letter IV, c. 6]. Those who are pressed by the necessity of death, sickness, siege, persecution, or shipwreck ought to be baptized at every time.

C. XVII. Unless necessity compels, no one is to presume to baptize outside Easter and Pentecost.

Likewise Gelasius to the clergy and people of Taranto. Let a bishop not presume to confer the venerable sacrament of baptism except on the feast of Easter and Pentecost, with the exception of those laboring under sickness, to whom, when danger of death presses, it is necessary to give aid by such remedies, lest they perish eternally.

C. XVIII. On the same matter.

The same. Let no one who is to be baptized believe that he possesses any confidence at any time other than the Paschal feast and the venerable sacrament of Pentecost, except only when a most grave illness assails him, in which it is to be feared that, with the danger of disease increasing, the sick person, overtaken by death, may perhaps depart without the saving remedy.

C. XIX. No one except a priest is to presume to baptize.

Likewise Isidore, *On Offices*, book II, c. 24. It is established that baptism was entrusted to priests alone, and that it is not lawful even for deacons themselves to carry out its ministry without a bishop or presbyter, unless, when these are far absent, the final necessity of sickness compels. This is also often permitted to faithful laypersons. Likewise Gelasius. § 1. "Deacons also then," as above in the tract on those to be ordained, where the reverence of deacons toward priests is treated.

C. XX. A woman is not to presume to baptize.

Likewise from the Fifth Council of Carthage, [cc. 99 and 100]. PART III. A woman, although learned and holy, is not to presume to baptize anyone or to teach men in an assembly. Gratian. Unless necessity compels. Hence Urban II: "Concerning the matters about which he consulted, etc.," as above in the tract on marriage, where godparents are treated.

C. XXI. Even laypersons can baptize when necessity compels.

Likewise Augustine to Fortunatus. In necessity, when bishops or presbyters or any of the ministers are not found, and danger presses the one who asks, lest he end this life without this sacrament, we are accustomed to hear that even laypersons ordinarily give the sacrament which they have received.

[PALEA.

C. XXII. On the same matter.

Likewise from Decree III of Pope Martin. Whatever presbyter, found in his own province or in another, or wherever he may be, refuses to baptize a sick person entrusted to him, whether because of his intention to journey or from some other excuse, and thus the sick person dies without baptism, is to be deposed.]

C. XXIII. Baptism administered by a pagan is not to be repeated.

Isidore. The Roman Pontiff does not judge the human being who baptizes, but that the Spirit of God supplies the grace of baptism, even if the one who baptizes is a pagan.

C. XXIV. On the same matter.

Likewise Nicholas, in response to the inquiries of the Bulgarians, c. 4. You assert that many in your country were baptized by a certain Jew—you do not know whether he was a Christian or a pagan—and you ask what is to be done about it. Assuredly, if these were baptized in the name of the Holy Trinity, or only in Christ's name, as is read in the Acts of the Apostles—for it is one and the same thing, as Saint Ambrose explains—they ought not to be rebaptized, because it is not theirs but his.

C. XXV. Baptism is administered equally through a bad minister as through a good one.

Likewise Augustine, *Against Cresconius the Grammarian*, [book III, c. 6]. If, among good ministers, although one is better than another, the baptism given through the better one is not better, in no way is that which is given even through a bad one bad, since the same baptism is given. And therefore God's equal gift is given through unequal ministers, because it is not theirs but his.

C. XXVI. Not the merits of the ministers but the power of Christ works in baptism.

The same on John, part I, tractate V, [on c. 1]. Baptism is such as he is in whose power it is given, not such as he is through whose ministry it is given. Likewise. § 1. What did John the Baptist know? The Lord. What did he not know? That the power of the Lord's baptism would pass from the Lord to no human being, although its ministry would certainly pass: the power from the Lord to no one, but the ministry to good and bad persons. Let the dove not recoil from the ministry of the bad; let it look to the Lord's power. What does a bad minister do to you where the Lord is good? How does a malicious herald impede you where the judge is benevolent? Likewise. § 2. Neither he who plants is anything, nor he who waters, but God who gives the increase. Likewise. § 3. Therefore I say, and all of us say, that those through whom one is baptized ought to be righteous, because the ministers of so great a judge ought to be righteous, if they wish to minister righteously. But if those who sit in the chair of Moses are unwilling to be righteous, my Teacher has made me secure, of whom his Spirit says: "This is he who baptizes." Likewise. § 4. I do not fear an adulterer, a drunkard, or a murderer, because I look to the dove through which it is said to me: "This is he who baptizes."

C. XXVII. On the same matter.

The same in tractate VI, [on c. 1 of John]. When a bad person baptizes through either some ignorance or toleration of the Church—for either the bad are unknown, or the chaff is tolerated until the threshing floor is winnowed at the end—that which is given is one, neither unequal because of unequal ministers, but alike and equal because of: "This is he who baptizes."

C. XXVIII. Baptism conferred in the name of the Holy Trinity is not repeated.

The same, *On Ecclesiastical Rules*, [c. 52]. If any have been baptized among those heretics who baptize with confession of the Holy Trinity and come to the Catholic faith, let them indeed be received as baptized, lest the invocation or confession of the Holy Trinity be annulled. But let them be fully taught and instructed in what the mystery of the Holy Trinity is held to be in the Church; and if they consent to believe or agree to confess it, once cleansed by the integrity of faith, let them be confirmed by the imposition of a hand. But if they are little children or dull-witted persons who cannot grasp

teaching, let those who present them answer on their behalf according to the custom of baptizing; and thus, through the imposition of a hand, having been given communion by chrism, let them be admitted to the mysteries of the Eucharist.

C. XXIX. On the same matter.

The same to Orosius, [in book LXV of *Questions in Dialogue*, question 59]. Although there is one baptism both of heretics—namely, those who baptize in the name of the Father and of the Son and of the Holy Spirit—and of the Catholic Church, nevertheless those who are baptized outside the Church receive baptism not unto salvation but unto destruction, possessing indeed the form of the sacrament but denying its power. And therefore the Church does not rebaptize them, because they were baptized in the name of the Trinity. And this assuredly is the form of the sacrament. Therefore, when they have returned, let them receive the power of the Holy Spirit, which those baptized outside the Church do not yet possess.

C. XXX. Those who are proved to have been baptized only in the name of the Lord are baptized.

Likewise Pelagius to Bishop Gaudentius. If in truth those heretics who are said to dwell in places neighboring your Charity perhaps confess that they were baptized only in the name of the Lord, without the ambiguity of any doubt you shall baptize them, when they come to the Catholic faith, in the name of the Holy Trinity. But if it has become clear to your Charity from the manifest confession of those who wish to be converted that they were baptized in the name of the Trinity, you shall hasten to unite them to the Catholic faith by bestowing only the grace of reconciliation, so that, with such dispensation preserved, nothing other than what evangelical authority commands may seem to have been effected by a spirit of anyone's temerity.

C. XXXI. Whether baptism conferred by one who has not been baptized is to be approved.

Likewise Augustine, *On the One Baptism*, book VIII, [c. 53]. PART IV. It is also customary to ask whether baptism received from one who has not received it is to be approved, if perhaps he learned from some curiosity how it is to be given; and whether it makes no difference with what intention the person to whom it is given receives it—with simulation or without simulation; and, if with simulation, whether as one deceiving, as in the Church or in that which is thought to be the Church, or as one jesting, as in a mime. § 1. Nevertheless, if someone perhaps pressed me, placed in a council where the question of such matters was being discussed, there being no preceding judgments whose opinions I would prefer to follow, to say what I myself thought, if I were affected in the same manner as I was when I dictated these things, I would in no way doubt that those possess baptism who, wherever and from whomever, received it consecrated with the evangelical words without simulation on their part and with some faith, although it would not profit them for spiritual salvation if they lacked charity, by which they are inserted into the Catholic Church. "For if I have faith so as to move mountains, but do not have charity, I am nothing." So, from the statutes of our predecessors, I do not doubt that those also possess baptism who, although they receive it deceitfully, nevertheless receive it in the Church or where those in whose society it is received believe the Church to be; concerning them it was said: "They went out from us." But where no society at all was believed to exist in such a way, and the whole thing was done playfully, mimically, and jestingly, I would judge that God's

judgment as to whether baptism given in this way was to be approved ought to be implored by the oracle of some revelation, with concordant prayer and groaning—yet in such a way that I would humbly examine whether those who would state opinions after me brought forward anything already investigated and known.

C. XXXII. Baptism conferred by heretics in the faith of the Holy Trinity is not repeated.

The same in book II. PART V. Those are shown to act impiously who try to rebaptize the unity of the world, and we to act rightly who do not dare to disapprove God's sacraments even in schism itself. For in that in which they agree with us, in that they also are with us. But they have withdrawn from us in that in which they disagree with us. Likewise. § 1. The sacrament of baptism is what the one who is baptized possesses, and the sacrament of giving baptism is what the one who is ordained possesses. For just as one baptized, if he withdraws from unity, does not lose the sacrament of baptism, so also one ordained, if he withdraws from unity, does not lose the sacrament of giving baptism. For injury is to be done to no sacrament. If he departs from the bad, both depart; if he remains among the bad, both remain. Therefore, just as the baptism which one who had withdrawn from unity could not lose is accepted, so the baptism given by one who did not lose the sacrament of giving when he withdrew is to be accepted. Likewise, [c. 12]. § 2. If one approaches baptism feignedly, have his sins been remitted to him or have they not been remitted? Let them choose what they wish; whichever they choose suffices for us. If they say that they have been remitted, how will the Spirit of discipline flee from the feigned person, if he has worked the remission of sins in him? If they say that they have not been remitted, I ask: if afterward, with his heart converted and with true sorrow, he confessed his feigning, would he be judged to require baptism anew? But if it is utterly mad to say this, let them acknowledge that a human being can be baptized with the true baptism of Christ and yet his heart, persevering in malice or sacrilege, not permit the abolition of sins to occur. And let them understand that people can be baptized in communions separated from the Church, where Christ's baptism is given and received with the same celebration of the sacrament, which nevertheless then profits for the remission of sins when someone, reconciled to unity, is stripped of the sacrilege of dissension by which his sins were held and not permitted to be remitted.

C. XXXIII. Baptism avails unto salvation even if little children are not presented with that faith.

The same in letter XXIII to Boniface. PART VI. Do not let this disturb you: that certain persons bring little children to receive baptism, not with the faith that they may be regenerated by spiritual grace unto eternal life, but because they think that by this remedy they may retain or recover temporal health. For the children are not on that account not regenerated, because they are not presented by these persons with this intention.

C. XXXIV. The shedding of blood fulfills the place of baptism.

Likewise, *On the One Baptism*, book IV, [c. 22]. PART VII. Blessed Cyprian takes from that thief to whom, though not baptized, it was said, "Today you shall be with me in paradise," no slight proof that suffering sometimes fulfills the place of baptism. Considering this again and again, I find that not only suffering for Christ's name can supply what was lacking from baptism, but also faith and conversion of heart, if perhaps in the constraints of time aid cannot be given for celebrating the

mystery of baptism. For that thief was not crucified for Christ's name, but for the deserts of his crimes; nor did he suffer because he believed, but while he suffered he believed. Therefore, how greatly even without the visible sacrament of baptism that which the Apostle says avails—"With the heart belief is made unto righteousness, but with the mouth confession is made unto salvation"—was declared in that thief. But this is fulfilled invisibly when not contempt for religion but an exigency of necessity excludes the ministry of baptism. [c. 24]. § 1. And just as in that thief the omnipotent one's kindness completed what was lacking from the sacrament of baptism, because it was lacking not through pride or contempt but through necessity, so the same grace of the omnipotent one must be believed to supply in infants who die baptized what, not from an impious will but from the want of age, they are able neither to believe with the heart unto righteousness nor to confess with the mouth unto salvation. Therefore, when prayer is made for them so that the celebration of the sacrament may be fulfilled toward them, it assuredly avails for their consecration, because they cannot answer for themselves. § 2. For it is another's work when one believes through another, just as it was another's work when one sinned in another. Likewise, [in the same book IV *Against the Donatists*, c. 23]. § 3. But just as in the thief, because through necessity baptism was bodily absent, salvation was perfect because through piety it was spiritually present, so also, when piety itself is present, if through necessity that which was absent from the thief is absent, salvation is perfected. The universality of the Church holds this as handed down when infant children are baptized, who certainly cannot yet believe with the heart unto righteousness and confess with the mouth unto salvation, which the thief could; indeed, by weeping and wailing while the mystery is celebrated for them, they themselves make a din against the mystical voices, yet no Christian would say that they are baptized in vain. Likewise, [c. 25]. § 4. By all these things it is shown that the sacrament of baptism is one thing and conversion of heart another, but that a human being's salvation is completed from both. Nor, if one of them is lacking, ought we therefore to think it follows that the other is also lacking, because the former can exist without the latter, as in an infant, and the latter could exist without the former, as in the thief, God completing, whether in the one or in the other, what had been lacking not by will. But when one of these has been lacking by will, a human being is enveloped in guilt. And baptism indeed can be present where conversion of heart has been lacking. Conversion of heart, however, can indeed be present when baptism has not been received, but cannot be present when baptism has been contemned. Nor is it in any way to be called conversion of the heart to God when God's sacrament is contemned.

C. XXXV. Not everything in a human being is baptized when he is baptized.

The same, *Against Julian*, [book VI, c. 6]. If whatever is in a human being when he is baptized and sanctified is to be believed to be baptized and sanctified, you are going to say that those very things in him which are digested in the intestines and bladder through bodily digestions are baptized and sanctified. You are going to say that a human being situated in his mother's womb is baptized and sanctified if necessity compels a pregnant woman to receive this sacrament, and therefore that one who is afterward born ought not now to be baptized. Finally, you are going to say that fevers are baptized and sanctified when the sick are baptized.

C. XXXVI. Baptism is valid even if it is ministered by laypersons.

The same to Fortunatus. Baptism is holy in itself, which is given in the name of the Father and of the Son and of the Holy Spirit, so that in the same sacrament there is also the authority of its transmission through our Lord to the Apostles, and through them to bishops and other priests, and even to lay Christians coming from the same origin and stock. § 1. For when that story is told, all who hear it are moved to tears. When on a certain ship there was no believer except one penitent, shipwreck began to threaten. There was someone there not unmindful of his salvation and a most vehement demander of the sacrament, and there was no one who could give it except that penitent. For he had received it; because of the sin for which he was doing penance, he had lost holiness, but he had not lost the sacrament. For if those who sin lose this, why are they not baptized again when they are reconciled after penance? Therefore he gave what he had received; and, lest he dangerously end his life unreconciled, he asked the very person whom he had baptized to reconcile him, and it was done. They escaped shipwreck. You know what they did. There was no one among those who heard of them who did not believe their disposition so pious as to believe that the Lord had been present to their counsels in that danger. For a religious and suppliant disposition demanded the sacrament from a human being and obtained holiness from God. But if someone perhaps does not wish to believe what I have narrated concerning those who were in danger when shipwreck threatened—for the authority of divine Scripture does not commend this, but report from an uncertain author—I shall not dispute it; but I ask: if something like this should happen, what will occur? For no one can say that the person who desires to be baptized when death threatens is to be abandoned. Whoever does not believe that it happened that he was baptized by a penitent must believe that it can happen.

C. XXXVII. Although a catechumen lives rightly, he nevertheless cannot be saved without baptism.

The same. We do not believe that a catechumen, although he died amid good works, has life, except only if he completes the sacrament of martyrdom. A baptized person confesses his faith before a priest and answers when questioned. A martyr does this same thing before a persecutor: he both confesses the faith and answers when questioned. The former, after confession, is sprinkled with water; the latter is sprinkled with blood or immersed in fire. The former receives the Holy Spirit by the pontiff's imposition of a hand; the latter becomes a dwelling of the Holy Spirit, since it is not he himself who speaks, but the Holy Spirit who speaks in him. The former communicates in the Eucharist in commemoration of the Lord's death; the latter dies together with Christ himself. The former confesses that he renounces the deeds of the world; the latter renounces those deeds and life itself. All the former's sins are remitted; the latter's are extinguished.

C. XXXVIII. Baptism whose form is established to have been conferred in full is not to be repeated.

Likewise Pope Leo, [letter XC, otherwise XCII, to Rusticus, c. 16]. PART VIII. Those concerning whom you wrote, who know that they were baptized but profess that they do not know of what faith those who baptized them were, are not to be rebaptized if in any manner they received the form of baptism; but through the imposition of a hand they are to be joined to Catholics by the power of the Holy Spirit, which they could not receive from heretics.

C. XXXIX. Christ baptizes equally through good and bad ministers.

Likewise Augustine on John, [tractate V on c. 1]. PART IX. It is one thing to baptize by ministry, another to baptize by power. Likewise. § 1. Therefore his disciples baptized, and Judas was still there among his disciples. But if Judas baptized any, were they not baptized again, while those whom John baptized were baptized again? Clearly again, but not with baptism repeated. For those whom John baptized, John baptized; but those whom Judas baptized, Christ baptized. Likewise, [tractate 6]. § 2. For through this power which Christ alone retained for himself and poured into none of his ministers —although he deigned to baptize through ministers—through this power, I say, stands the unity of the Church, which is signified in the dove, of which it was said: "One is my dove, the one chosen for her mother." For if, as I have already said, my brothers, power were transferred from the Lord to a minister, there would be as many baptisms as there were ministers, and the unity of baptism would no longer stand. Attend, brothers. Before our Lord Jesus Christ came to baptism, the dove descended upon the water. John recognized something proper to him to whom it was said: "Upon whom you see the Spirit descending and remaining upon him, this is he who baptizes in the Holy Spirit." Now he knew that he baptized in the Holy Spirit; but that he did so with such a property that the power would not pass from him to another, although by his gift, this he learned there. Likewise, [tractate 80]. § 3. "Now you are clean because of the word which I have spoken to you." Why did he not say, "You are clean because of the baptism with which you were washed," but said, "Because of the word which I have spoken to you," unless because the word cleanses also in the water? Likewise, [tractate 5]. § 4. If the minister is righteous, I count him with Paul, with Peter; with these I count righteous ministers. But because righteous ministers do not seek their own glory—for they are ministers—they do not wish to be regarded as leaders; they shudder at hope being placed in themselves. Therefore I count a righteous minister with Paul. For what does Paul say? "I planted, Apollo watered, but God gave the increase."

C. XL. Schismatics lose neither baptism nor the power of baptizing.

The same in book I *On Baptism*. No one denies that even apostates possess baptism; when they return and are converted through penance, it is assuredly not restored to them, because it is judged that it cannot be lost. So also those who withdraw from the communion of the Church into the sacrilege of schism assuredly possess the baptism which they received before they withdrew. For even if they themselves return, it is not given to them again. From this it is shown that what they received while situated in unity could not be lost when they were separated. But if it can be possessed outside, why can it not also be given there? If you say, "It is not rightly given outside," we answer: just as it is not rightly possessed outside and yet is possessed, so it is not rightly given outside and yet is given. But just as through reconciliation to unity that which was possessed uselessly outside unity begins to be possessed usefully, so through the same reconciliation that which was given uselessly outside it begins to be useful. Likewise, [book III, c. 19]. § 1. Heretics possess the sacraments and the Scriptures for appearance, not for salvation. Likewise, [book IV, c. 11]. § 2. If a faithless person remains in faithlessness, through baptism he does not receive remission of sins even outside the Church; or, if because of the power of the sacrament he receives it for a point of time, that power works both outside and inside, just as the power of Christ's name worked the expulsion of demons even outside.

C. XLI. Bad persons minister baptism not by their own power but by Christ's power.

Likewise. How does God hear a murderer praying, whether over the water of baptism, over oil, over the Eucharist, or over the heads of those upon whom a hand is imposed? Yet all these things are both done and valid even through murderers, that is, through those who hate their brothers. Even within the Church itself, since no one can give what he does not possess, how does a murderer give the Holy Spirit? And yet within it even he baptizes. Therefore God gives the Holy Spirit even when he baptizes. Consequently, God gives the sacrament of grace even through bad persons, but grace itself only through himself or through his saints; and therefore he effects the remission of sins either through himself or through the members of that dove, to whom he says: "If you remit the sins of anyone, they shall be remitted." But if the imposition of a hand were not applied to one coming from heresy, although he would be judged to be entirely without fault, nevertheless, for the joining of charity—which is the greatest gift of the Holy Spirit, without which whatever other holy things may be in a human being do not avail unto salvation—a hand is imposed upon corrected heretics. Human beings, moreover, put on Christ sometimes as far as the reception of the sacrament, sometimes also as far as the sanctification of life; and that first can be common to both good and bad persons, but this is proper to the good and pious. § 2. It seemed to certain even excellent men, bishops of Christ—among whom blessed Cyprian especially stood forth—that Christ's baptism could not exist among heretics or schismatics, for no reason other than that the sacrament was not distinguished from the effect or use of the sacrament; and because its effect and use in liberation from sins and rectitude of heart was not found among heretics, they thought that the sacrament itself also did not exist there. But when they turned their eyes to the multitude of interior chaff—since even those who within unity itself are perverse and live ruinously appear to be able neither to give nor possess the remission of sins, because it was said not to malignant sons but to the good, "If you remit the sins of anyone, they are remitted to them," and the rest, and yet they possess, give, and receive the sacrament of baptism—it shone forth sufficiently clearly to the shepherds of the Catholic Church that even a sheep which wandered outside and received the Lord's character outside, upon coming to the salvation of Christian unity, was to be corrected from error, but that the Lord's character in it was to be recognized rather than disapproved, since many who are both wolves and imprint it upon wolves appear to be within, but nevertheless do not belong to that sheep which is one from many. § 3. When a bad person transmits baptism to a good person, that is, one changed by true conversion within the bond of unity, the malice of the giver does not separate the good sacrament which is transmitted from the good believer to whom it is transmitted. And when sins are remitted to one truly converted to God, they are remitted by those to whom he is joined by true conversion; the Holy Spirit remits them, who has been given to all the saints cohering with him by charity, whether they have known one another bodily or have not known one another. Similarly, when someone's sins are retained, they are retained by those from whom he is disjoined by depravity of heart, whether known or unknown bodily. § 4. All bad persons are spiritually separated from the good. But if they are separated also bodily by open withdrawal, they become worse. Yet it makes no difference to the sanctity of baptism how much worse anyone who possesses it is, or to how much worse a person he transmits it. One separated can nevertheless transmit it, just as one separated can possess it. But as pernicious as it is to possess, so perniciously does he transmit it. The person to whom he transmits it, however, can receive it salutarily if he himself, not separated, received it when the necessity of death pressed. § 5.

Why can heretics not baptize outside? Is it because they are worse by the very fact that they are outside? But it makes no difference to the integrity of baptism how much worse a person transmitting it is. For there is not as much difference between a bad and a worse person as between a good and a bad person, and yet, when a bad person baptizes, he gives nothing other than one who is less bad. Or perhaps does it pertain not to the merit of the human being but to the sacrament of baptism itself that it cannot be given outside? If this were so, it could not be possessed outside either, and it would be necessary to baptize someone as many times as, having withdrawn from the Church, he returned again to the Church. § 6. For those who are baptized with a feigned heart, either sins are in no way remitted, because the Holy Spirit of discipline will flee from the feigned person, or, remitted at the very point of time through the power of the sacrament, they are again brought back through the feigning, so that both this may be true—"As many of you as have been baptized in Christ"—and this: "The Holy Spirit of discipline will flee from the feigned person"; that is, let the sanctity of baptism clothe him with Christ, and let the ruin of feigning strip him of Christ. For the Lord teaches most openly in the Gospel, in that servant from whom the Lord demanded the debt that had been remitted because he would not remit the debt to his fellow servant, that remitted sins return where fraternal charity is absent. Thus the grace of baptism is not impeded from remitting all sins, even if fraternal hatred persists in the mind of the one to whom they are remitted. For yesterday is absolved, and whatever remains is absolved, even the hour and moment itself before baptism and in baptism; but immediately afterward he begins to be guilty not only of the succeeding days, hours, and moments, but also of the preceding ones, as all the things that were remitted return.

C. XLII. When baptism profits one who approaches feignedly.

The same. PART X. Baptism begins to avail unto salvation when that feigning which, while the heart persevered in malice or sacrilege, did not permit the washing away of sins to occur has withdrawn through truthful confession.

C. XLIII. Sacraments ministered outside the Church are not repeated.

The same to the Donatists, [letter XLVIII]. We do not change in you those things in which you are with us—for in many things you are with us, since of such persons it was said: "Because they were with me in many things"—but we correct those things in which you are not with us, and we wish you to receive here the things you do not possess there, where you are. For you are with us in baptism, in the creed, and in the other sacraments of the Lord. But in the spirit of unity and bond of peace, and finally in the Catholic Church itself, you are not with us. § 1. But those with whom or concerning whom we are dealing are not to be despaired of, for they are still in the body; but let them not seek the Holy Spirit except in Christ's body. Outside they possess its sacrament, but within they do not hold the reality itself to which that sacrament belongs; and therefore they eat and drink judgment for themselves.

C. XLIV. How those baptized among heretics in the name of the Trinity are received into the Church.

Likewise Gregory to Bishop Quiricus and the other bishops in Iberia, [book IX, letter 61]. We have learned from the ancient institution of the Fathers that those who are baptized in the name of the Trinity among a heresy, when they return to holy Church, are recalled to the bosom of Mother Church either by anointing with chrism, by the imposition of a hand, or by profession of faith alone.

Hence the West reforms Arians for entrance into the Catholic Church through the imposition of a hand, but the East through anointing with holy chrism. It receives Monophysites and others by confession alone, because the holy baptism which they obtained among heretics then receives in them the powers of cleansing when either the former have received the Holy Spirit through the imposition of a hand, or the latter have been united to the inward parts of the holy and universal Church through profession of the true faith.

C. XLV. Baptism can be received outside the Church, but it does not profit there.

Likewise Augustine. The Church, compared to paradise, indicates to us that human beings can indeed receive its baptism even outside, but that no one outside it can either receive or retain the salvation of beatitude. For the happiness of life which is commemorated in paradise is not in Mesopotamia or Egypt, to which those rivers came. Thus, therefore, the Church's baptism can be outside the Church, but the gift of a good life is found only within the Church.

C. XLVI. Heresy and sacrilege belong to heretics, not the sacraments.

The same, *On the One Baptism*, [*Against the Donatists*], book III, [c. 11]. But now, just as heresy belongs to heretics, as their error belongs to them, and as the sacrilege of their dissension also belongs to them, so the baptism, which belongs to Christ, ought not also to be called theirs.

C. XLVII. On the same matter.

The same in book V, [c. 13]. Since baptism through a contemptible human being avails as much as that given through an Apostle, it is thereby known to belong neither to the one nor to the other, but to Christ. Likewise, [c. 14]. § 1. We find that the Apostles said "my glory," although certainly in the Lord, and "my prudence," and "my ministry," and "my Gospel," although certainly imparted and given by the Lord; but none of them ever called baptism "mine." For not everyone's glory is equal, nor do all minister equally; nor are all endowed with equal prudence or knowledge, and in evangelizing one works better than another. And therefore one can be called more learned than another in saving doctrine itself. But one cannot be called more or less baptized than another, whether he is baptized by an inferior or a superior.

C. XLVIII. On the same matter.

The same in book IV, [c. 15]. We have shown sufficiently that the error of anyone, whether giver or receiver, does not pertain to baptism which is consecrated with the evangelical words, whether he thinks differently about the Father, the Son, or the Holy Spirit from what heavenly teaching intimates.

C. XLIX. The Church's sacraments are common to good and bad persons.

The same in the book *On Baptism*. There is a unity of the Church which extends widely, namely in the fellowship and communion of the sacraments, which embraces the chaff together with the grains when it tolerates them thus bodily mixed, so that the righteous neither avoid them nor are avoided by them. Thus bad human beings are in the Church as bad humors are in the human body, which sometimes go out from the body.

C. L. Nevertheless, the malice of the one blessing does not harm the water of baptism.

The same, *On the One Baptism*, book VI. The water over which the Lord's name is invoked is not profane and adulterous, even if it is invoked by profane persons and adulterers, because neither the creature itself nor the name itself is adulterous.

C. LI. One baptized by heretics is not to be rebaptized.

Likewise Bede, homily XXXVI, [on c. 3 of John]. Whether a heretic, a schismatic, or any criminal baptizes in the confession of the Holy Trinity, the person baptized cannot be rebaptized by good Catholics, lest the confession or invocation of so great a name seem to be annulled.

C. LII. Those baptized by pagans are to be baptized in the name of the Trinity.

Likewise Gregory II to Bishop Boniface. Concerning those whom you asserted to have been baptized by pagans, if this is so, we command that you baptize them anew in the name of the Trinity.

C. LIII. No one is to be baptized without exorcisms and exsufflations.

Likewise Pope Celestine. PART XI. Whether little children or young persons come to the sacrament of regeneration, let them not approach the font of life before the unclean spirit is driven from them by the exorcisms and exsufflations of clerics.

C. LIV. The office of catechizing should precede the baptizing.

Likewise Rabanus, *On the Instruction of Clerics*, [book I, c. 25]. Before baptism the office of catechizing ought to precede a human being, so that the catechumen may first receive the rudiment of faith. Likewise. § 1. Christ himself first smeared the eyes of the man born blind with clay made from spittle and thus sent him to the waters of Siloam, because one to be baptized ought first to be instructed in the faith of Christ's incarnation and thus, now believing, be admitted to baptism, so that he may know of whose grace he is made a participant in it and to whom he thereafter becomes a debtor.

C. LV. At what time catechumens are to be brought for exorcism.

Likewise from the Second Council of Braga, [c. 1]. For twenty days before baptism, catechumens are to hasten to the cleansing of exorcism; during these twenty days they are to be taught spiritually the whole creed, which is: "I believe in God the Father almighty."

C. LVI. At what time the creed is to be preached to the competentes.

Likewise from the Council of Agde, [c. 13]. It was also resolved that the creed be preached publicly in church to the *competentes* by all churches on one day, that is, eight days before the Lord's resurrection.

C. LVII. Those to be baptized can be catechized in each church.

Likewise Pope Nicholas. The catechisms of those to be baptized can be performed by the priests of each church, as they are proved to be solemnly performed in this holy Roman Church, to which, by God's authority, we render the ministry of our service.

C. LVIII. On the same matter.

Likewise from the Council of Laodicea, [c. 46]. Those to be baptized ought to learn the creed of the faith and recite it to either the bishop or presbyter on the Thursday of the final week.

C. LIX. On the same matter.

Likewise from the Council of Pope Martin, [c. 49]. It is not permitted to receive anyone for baptism two weeks before Easter, but three weeks before. Those who are to be baptized ought, during these days, to learn the creed and recite it to the bishop or presbyter on the Thursday of the final week.

C. LX. Before they are baptized, all are to be examined.

Likewise from the Fourth Council of Carthage, [c. 85]. Those to be baptized are to give their names, and for a long time, under abstinence from wine and meats and through frequent examination with imposition of a hand, receive baptism.

C. LXI. Why those to be baptized are exorcized and exsufflated.

Likewise Rabanus, *On the Instruction of Clerics*, [book I, c. 27]. After the one to be baptized has commended himself through confession of the true faith to the dominion of another and through renunciation has alienated himself from the service of his former possessor, the savage power is exsufflated from him, so that, through the pious ministry of the priest, the malign spirit may flee and yield to the Holy Spirit.

C. LXII. On the same matter.

Likewise Augustine, *On the Creed*, book I, [c. 1]. As you know, dearest brothers, little children are exsufflated and exorcized so that the hostile power of the devil, which deceived the human being in order to possess human beings, may be driven from them. Therefore, it is not the creature in the infants that is exorcized or exsufflated, but he under whom those who are born under sin are held.

C. LXIII. Why one to be baptized is signed upon the heart and forehead.

Likewise Rabanus, *On the Instruction of Clerics*, [book I, c. 27]. Afterward the one to be baptized is signed with the sign of the holy cross both on the forehead and on the heart, so that from that time the apostate devil, recognizing in his former vessel the sign of his own destruction, may know that it is thereafter alien to him.

C. LXIV. Why prayers are said over him.

The same in the same book. From this point prayers are said over him so that he may become a catechumen. Then blessed salt is given into the mouth of the one to be baptized so that, seasoned through the typological salt with the salt of wisdom, he may lack the stench of iniquity and no longer putrefy from the worms of sins, but rather be preserved unharmed for receiving greater grace.

C. LXV. Why they are initiated with salt.

Likewise Bede on the Book of Kings. We are commanded to offer in all the sacrifices of our works the salt of heavenly wisdom with which catechumens are initiated.

C. LXVI. Why they are exorcized again.

Likewise Rabanus, *On the Instruction of Clerics*, [book I, c. 27]. Then the devil is exorcized again, so that, recognizing his own wickedness and fearing God's just judgment upon himself, he may withdraw from the human being and no longer strive by his art to overthrow him lest he obtain baptism, but rather, exhibiting honor to God his creator, may restore the work to God its maker.

C. LXVII. Priests drive away demons by exorcizing.

Likewise Gregory in homily XXIV. When priests, through the grace of exorcism, impose a hand upon believers and forbid malignant spirits to dwell in their mind, what else do they do but cast out demons?

C. LXVIII. Why nostrils and ears are touched with saliva.

Likewise Rabanus, *On the Instruction of Clerics*, [book I, c. 27]. Afterward his nostrils and ears are touched with saliva, and the evangelical word is said to him which Jesus, when he healed the deaf and mute man, said while touching his tongue with spittle and putting his fingers into his ears: "Ephphatha," which is "Be opened." For this sacrament is enacted here: that through the typological saliva and the priest's touch divine wisdom and power may work the salvation of the same catechumen, so that his nostrils may be opened to receive the fragrance of the knowledge of God, his ears may be opened to hear God's commandments, and his senses may be opened in his inmost heart to respond.

C. LXIX. Why the bishop touches the nostrils, not the mouths, of those to be baptized.

Likewise Ambrose, *On the Sacraments*, [book I, c. 1]. On account of the glory of the gift and work, the bishop does not touch the mouth but the nostrils, so that the person may receive the good fragrance of eternal piety.

C. LXX. Why they are anointed by a priest.

Likewise Rabanus, *On the Instruction of Clerics*, [book I, c. 27]. Then he is anointed by the priest so that holy baptism together with the faith received may be preserved. His breast is then anointed with consecrated oil, with invocation of the Holy Trinity, so that no remnants of the lurking enemy may remain in him, but his mind may be strengthened in the faith of the Holy Trinity. He is anointed between the shoulders with the same oil so that he may be fortified on every side and strengthened by God's grace for performing good works. The same, [c. 28]. § 1. The font is consecrated so that the catechumen may approach it for baptism itself.

C. LXXI. How the presence of the Trinity consecrates the baptismal font.

Likewise Ambrose in book II *On the Sacraments*, [c. 5]. The priest comes to the font, says a prayer, invokes the name of the Father and of the Son and of the Holy Spirit, and uses heavenly words. Heavenly are the words which are Christ's. The presence of the Trinity is at hand; the eternal Word works; and there the Holy Spirit descends. First he descended as a dove so that unbelievers might be called to faith. In the beginning there had to be a sign; in later times, perfection. For the Holy Spirit

was given to the Apostles in fiery tongues on account of unbelievers; but for us, now in the fullness of the Church, the truth is to be gathered not through signs but through faith.

C. LXXII. Words of error uttered through inexperience do not impede the sanctification of the water.

Likewise Augustine, *On the One Baptism*, book VI, [c. 25]. PART XII. If water is not sanctified when the one praying pours forth some words of error through inexperience, many brothers within the Church itself, not only bad but also good, do not sanctify water. For the prayers of many are corrected daily if they are recited to learned teachers, and many things contrary to the Catholic faith are found in them. Surely, if it should be disclosed that some were baptized when those prayers had been said over the water, are they ordered to be baptized anew? Why is this? Because the disposition of the one praying frequently overcomes the fault of the prayer; because those other evangelical words, without which baptism cannot be consecrated, are so powerful that through them whatever is said in a faulty prayer contrary to the rule of faith is nullified, just as a demon is driven out by Christ's name. For assuredly, if a heretic offers a faulty prayer, he does not possess the good disposition of charity by which that inexperience can be overcome—and therefore whoever within the Catholic Church is envious, unclean, or malevolent, such as Cyprian rebukes here, is like him. Let him also offer, as often happens, some prayer in which he speaks contrary to the rule of faith—for many fall upon prayers composed not only by inexperienced talkers but even by heretics, and, being unable to discern these things through the simplicity of ignorance, use them thinking them good—yet what is perverse in them does not nullify those things that are right there, but rather is nullified by them.

C. LXXIII. What the mysteries celebrated in the baptismal font signify.

Likewise Augustine to the Neophytes, [homily III]. PART XIII. In the first and second sermon, therefore, we spoke only about those things which, before you came to the holy font, we handed down to you according to the institutions of the Catholic Church. And, insofar as the Lord deigned to grant it, we interpreted what the anointing signified, which, applied to diverse parts of our body, designates a diverse understanding, when we showed that through the oil of sanctification you were prepared for hearing the full faith and called to the good fragrance of Christ, and were admonished from the whole heart to renounce the devil. Now, however, we are going to speak about the more inward mysteries which were celebrated in the holy font itself. For, after issuing the most certain bond by which you promised to renounce all the pomps of the devil, his works, and every diabolical fornication, you descended into the font—the sacred font, the font of redemption, the font sanctified by heavenly power. Likewise. In this font, therefore, before we immersed you with the whole body, we asked: "Do you believe in God the Father almighty?" You answered: "I believe." Again we asked: "Do you believe also in Jesus Christ his Son, who was born of the Holy Spirit and the Virgin Mary?" Each of you answered: "I believe." Likewise we asked: "And in the Holy Spirit?" You similarly answered: "I believe." We do this according to the command of our Lord and Savior Jesus Christ, who, when he was ascending to the Father in heaven, commanded his disciples, that is, the Apostles, saying: "Going, teach all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit." Likewise. § 1. But when we asked, "Do you believe the holy Church, the remission of sins, the resurrection of the flesh?" we did not ask in such a way that you would believe in the holy Catholic Church as in God. It is holy and Catholic for this reason: because it believes rightly in God. Therefore we did not say that you should believe in the Church as in God; but understand that we

say, and said, that while dwelling in the holy Catholic Church you should believe in God, and should also believe the resurrection of the flesh which is to come.

C. LXXIV. Little children are baptized through the faith and profession of others.

Likewise Isidore, *On Offices*, book II, [c. 24]. PART XIV. Little children are baptized with another professing because they do not yet know how to speak or believe, just as also the sick, mute, and deaf, in whose place another professes so that he may answer for them while they are baptized.

C. LXXV. The sick are to be baptized on the testimony of others.

Likewise from the Fourth Council of Carthage, [c. 48]. If sick persons cannot answer for themselves, let them be baptized when their own people have spoken testimony to their will. The same is to be done concerning penitents.

C. LXXVI. The sacrament of faith, not faith itself, makes a little child faithful.

Likewise Augustine, [letter XXIII to Boniface]. To believe is nothing other than to have faith, and by this, when the answer is given that the little child believes, though he does not yet possess the effect of faith, the answer is given that he has faith on account of the sacrament of faith, and that he turns himself to God on account of the sacrament of conversion, because that very response also pertains to the celebration of the sacrament. Likewise. § 1. Although that faith which consists in the will of believers does not yet make the little child faithful, nevertheless the sacrament of faith itself now does, just as the answer is given that he believes; for in this way they are called faithful, not by assenting to the reality itself with the mind, but by receiving the sacrament of the reality itself.

C. LXXVII. Another's profession does not avail one who can answer for himself.

The same in book IV *On Baptism*, [c. 24]. When others answer for little children so that the celebration of the sacrament may be fulfilled toward them, it assuredly avails for their consecration, because they cannot answer for themselves. But if another answers for one who can answer, it does not avail in the same way. From this rule comes that saying of the Gospel which naturally moves everyone when it is read: "He is of age; let him speak for himself."

C. LXXVIII. Why triple immersion is celebrated in baptism.

Likewise Augustine in homily III. After you promised to believe, we immersed your heads three times in the sacred font. This order of baptism is celebrated with a twofold signification of the mystery. For rightly were you immersed three times, who received baptism in the name of the Holy Trinity. Rightly were you immersed three times, who received baptism in the name of Jesus Christ, who rose from the dead on the third day. For that immersion repeated three times expresses the type of the Lord's burial, through which you were buried together with Christ in baptism and rose together with Christ in faith, so that, absolved from sins, you may live Christ in the sanctity of virtues by imitating him.

C. LXXIX. Concerning those who are immersed once, not three times, in baptism.

Likewise from the Canons of the Apostles, [c. 50]. If any presbyter or bishop does not celebrate the triple immersion of the one mystery, but immerses once in baptism—which some command to be given in the Lord's death—let him be deposed. For the Lord did not say to us, "Baptize in my death," but: "Going, teach all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit."

C. LXXX. On the same matter.

Likewise Gregory to Bishop Leander, [book I, letter 41]. PART XV. Concerning the triple immersion of baptism, nothing can be answered more truly than what you yourselves perceived, because diversity of custom harms holy Church in no way in one faith. For our part, because we immerse three times, we signify the sacraments of the three-day burial, and while the infant is raised from the waters three times, the resurrection of the three-day period is expressed. But if someone perhaps also considers that it is done in veneration of the supreme Trinity, neither does this in any way prevent immersing those to be baptized once in the waters; for since there is one substance in three subsistences, it can in no way be reprehensible to immerse an infant in baptism either three times or once, because in three immersions the Trinity of persons can be designated, and in one the singularity of the divinity.

C. LXXXI. On the same matter.

Likewise Jerome on the Letter to the Philippians, book II, [on c. 4, v. 5]. In the same way we are baptized in the Father and the Son and the Holy Spirit and are immersed three times, so that the one sacrament of the Trinity may appear. Likewise. Although one is baptized three times on account of the mystery of the Trinity, nevertheless it is reckoned one baptism.

C. LXXXII. Concerning those who are immersed only once in Christ's name.

Likewise Pelagius to Bishop Gaudentius. There are many who assert that they are baptized only in Christ's name, even with one immersion. But the evangelical precept, handed down by God himself, our Lord and Savior Jesus Christ, admonishes us to confer holy baptism upon each person in the name of the Trinity, even with a triple immersion, as our Lord Jesus Christ says to his disciples: "Go, baptize all nations in the name of the Father and of the Son and of the Holy Spirit."

C. LXXXIII. At the invocation of the Trinity we ought to immerse three times in baptism.

Likewise Pope Zacharias to Bishop Boniface, [in the letter whose beginning is "At the Sacred Thresholds"]. PART XVI. It is known to have been decreed in the synod of the English, most firmly commanded, and diligently demonstrated that whoever had been immersed without invocation of the Trinity did not possess the sacrament of regeneration. This is altogether true, because if anyone has been immersed in the baptismal font without invocation of the Trinity, he is not a perfect Christian unless he has been baptized in the name of the Father and of the Son and of the Holy Spirit. § 1. The priests in the aforesaid synod also wished this to be observed: that if anyone did not name even one person of the Trinity in baptism, that baptism could not be true. This is certainly true, because one who has not confessed the name of one of the Holy Trinity cannot be a perfect Christian. For one who

confesses the Father and the Son, if he has not confessed the Holy Spirit, possesses neither the Father nor the Son; and one who has confessed the Father and the Holy Spirit but has not confessed the Son possesses neither the Father nor the Holy Spirit, but is empty of divine grace.

C. LXXXIV. Those who were not baptized in the name of the Trinity are to be rebaptized.

Likewise Gregory to Bishop Quirinus in Iberia, [book IX, letter 61]. But those heretics who are not baptized in the name of the Trinity, such as the Bonosians and Cataphrygians—because the former do not believe Christ the Lord, and the latter, with perverse understanding, believe the Holy Spirit to have been a certain depraved man, Montanus, and there are many others like them—when they come to holy Church, are to be baptized, because that was not baptism which, situated in error, they did not receive in the name of the Holy Trinity.

C. LXXXV. It is permitted to immerse once in baptism.

Likewise from the Fourth Council of Toledo, [c. 5]. For the avoidance of the scandal of schism or the usage of heretical doctrine, let us retain the single immersion of baptism.

C. LXXXVI. Concerning a priest who, through inexperience in the Latin language, erred in the invocation of the Trinity.

Likewise Pope Zacharias to Bishop Boniface. Your messengers reported that in that same province there was a priest who was entirely ignorant of the Latin language and, while baptizing, not knowing how to speak Latin and mangling the language, would say: "I baptize you in the name of the Fatherland, and the Daughter, and the Holy Spirit." And on account of this your reverend Holiness considered rebaptizing them. But, most holy brother, if the one who baptized, introducing no error or heresy, but solely through ignorance of Roman speech and mangling the language, said this while baptizing, as we stated above, we cannot consent that they be baptized anew.

C. LXXXVII. Why those baptized are anointed by a priest.

Likewise Ambrose, *On the Sacraments*, tractate I, [c. 2]. PART XVII. You came to the font; you entered. Consider what you saw; carefully repeat what you said. A Levite met you, a presbyter met you; you were anointed like an athlete of God so that as a catechumen you might approach baptism.

C. LXXXVIII. Why one baptized is anointed on the crown of the head by a presbyter.

Likewise Rabanus in book II on the Letter to the Ephesians. After the baptized person ascends from the font, he is immediately signed on the crown of the head by the presbyter with sacred chrism, with a prayer accompanying it at the same time, so that he may become a participant in Christ's kingdom and may be called a Christian from Christ.

C. LXXXIX. What is said over one baptized by the priest.

Likewise Ambrose, *On the Sacrament*, tractate II, [c. 7]. You emerged; you came to the priest. What did he say to you? "God," he says to you, "the almighty Father, who regenerated you from water and the Holy Spirit and forgave you your sins, may he himself anoint you unto eternal life." See to what you were anointed: "Unto eternal life," he says.

C. XC. Why ointment is placed upon the head of one baptized.

Likewise, [in book III *On the Sacraments*, cc. 1 and 2]. You received the mystery, that is, ointment upon the head. Why upon the head? Because the senses of a wise person are in his head. [c. 2]. § 1. The spiritual seal follows, which you heard read today, which remains after the font so that perfection may be brought about when, at the invocation of the priest, the Holy Spirit is poured forth.

C. XCI. Why a white garment is handed to Christians.

Likewise Rabanus, *On the Instruction of Clerics*, [book I, c. 29]. After baptism a white garment is handed to the Christian, which signifies Christian innocence and purity; after the old stains have been washed away, he ought to preserve it immaculate by zeal for holy conduct, to present it before Christ's tribunal. All the reborn are clothed in white garments for the mystery of the rising Church. Likewise. § 1. The baptized use white garments so that the attire of second regeneration may display a garment of glory for those whose countenance at their first birth the cloth of ancient error had darkened. For after the sacred anointing his head is covered with a mystical veil so that he may understand that he possesses the diadem of the kingdom and priestly dignity.

C. XCII. On the same matter.

Likewise Ambrose, *On the Mysteries*, [c. 7]. After baptism you received white garments so that it might be an indication that you had put off the pleasure of sins and put on the chaste veils of innocence.

C. XCIII. For how many months Jews are to be held among the catechumens.

Likewise from the Council of Agde, [c. 34]. PART XVIII. If Jews, whose faithlessness frequently returns to its vomit, wish to come to the Catholic laws, let them enter the threshold of the Church for eight months among the catechumens; and if they are known to come with pure faith, then at last let them merit the grace of baptism. But if, through some occurrence, they encounter the danger of sickness within the prescribed time and are despaired of, let them be baptized.

C. XCIV. Concerning the many Jews who frequently return to Judaism.

Likewise from the Fifth Council of Toledo, [c. 58]. Many of the Jews who long ago were advanced to the Christian faith are now known, while blaspheming Christ, not only to have perpetrated Jewish rites but also to practice abominable circumcisions. Concerning them, at the counsel of our most pious and religious lord King Sisenand, this holy council decreed that transgressors of this kind, corrected by pontifical authority, are to be recalled to the worship of Christian dignity, so that priestly chastisement may restrain those whom their own will does not amend. But those whom they circumcised, if they are their children, are to be separated from association with their parents; if slaves, they are to be delivered to liberty for the injury to their bodies.

C. XCV. Before baptism we ought to renounce the devil and his works.

Likewise Rabanus, *On the Instruction of Clerics*, [book I, c. 27]. First let the pagan be asked whether he renounces the devil and all his harmful and deceitful works, so that he may first reject error and thus approach truth, and, according to the Apostle, may be able to put off the old human being according to his former conduct, who is corrupted according to the desires of error, renouncing impiety and secular desires.

C. XCVI. One who does not repent of the old life does not pass to the new life.

Likewise Augustine, *On Penance*, [c. 2]. Everyone who has now been established arbiter of his own will, when he approaches the sacrament of the faithful, cannot begin the new life unless he repents of the old life. Little children alone are exempt from this penance when they are baptized, for they cannot yet use free choice.

C. XCVII. We ought to do penance before baptism.

The same to the man of Salecta, [letter CVIII]. Human beings do penance before baptism for their former sins, yet in such a way that they are also baptized, as is written in the Acts of the Apostles, when Peter speaks to the Jews and says: "Do penance, and let each of you be baptized in the name of our Lord Jesus Christ."

C. XCVIII. Abstinence of forty days is enjoined upon Jews who are to be baptized.

Likewise Gregory to the Defender Faustinus, [book VII, letter 24]. Lest—which may it not happen—a long delay be able to call back the minds of the Jews, speak with our brother the bishop of that place, so that, after penance and abstinence of forty days have been enjoined, you may baptize them either on a Sunday or, if a most celebrated feast occurs, under the protection of almighty God's mercy.

C. XCIX. Penance is not necessary for those to be baptized.

Likewise Ambrose on the Letter to the Romans, [on c. 11]. The gifts and calling of God are without repentance, because the grace of God in baptism requires no groaning, requires no lamentation or any work, but faith alone, and freely forgives all things.

C. C. When necessity compels, the same godparent can serve in catechism and confirmation.

Likewise Pope Hyginus. PART XIX. In catechism, baptism, and confirmation, one sponsor can serve if necessity compels. Yet this is not the Roman custom, but individual persons receive individual persons.

C. CI. Not several persons, but one, is to receive a little child in baptism.

Likewise from a decree of Pope Leo. Let no more than one person, whether man or woman, approach to receive an infant from baptism. Let the same also be done in confirmation.

C. CII. One who is neither baptized nor confirmed ought not to hold another in chrism or baptism.

Likewise from the Council of Mainz. In baptism or chrism, one who is neither baptized nor confirmed cannot receive another as a godchild.

C. CIII. It is not permitted for an abbot or monk to have co-mothers.

Likewise from the Council of Auxerre, [c. 25]. It is not permitted for an abbot or monk to receive children from baptism or to have co-mothers.

C. CIV. On the same matter.

Likewise from the Book of Capitularies. Let monks not make for themselves co-fathers or co-mothers, nor kiss women.

C. CV. Those who receive little children in baptism stand as sureties for them before God.

Likewise from a sermon of Saint Augustine after the Lord's Easter, which begins, "Today's day." Above all, I admonish you, women as well as men, who have received children in baptism, to recognize that you have stood as sureties before God for those whom you were seen to receive from the sacred font. Therefore, always admonish them to preserve chastity, love justice, and retain charity. § 1. Above all, both hold the creed and the Lord's prayer yourselves and show them to those whom you received.

C. CVI. Priests ought to have proper vessels for the office of baptizing and for washing the altar cloths.

Likewise from the Council of Lleida. PART XX. Every presbyter who has been unable to have a stone font is to have a suitable vessel solely for the office of baptizing, which is not to be carried outside the church. Similarly, proper vessels are to be kept for washing the corporal and the altar palls, in which nothing else is to be done.

C. CVII. Neither rebaptizations nor reordinations are permitted to be performed.

Likewise from the Fourth Council of Carthage, [c. 38]. PART XXI. It is not permitted for rebaptizations, reordinations, or retranslations of bishops to be performed.

C. CVIII. On the same matter.

Likewise from letter CCIII of Augustine to Maximinus. To rebaptize a heretical person who has received those signs of the Holy Trinity which Christian discipline has handed down is altogether a sin; but to rebaptize a Catholic is a most monstrous crime.

C. CIX. Concerning Arians: when they are rebaptized and when not.

Likewise in the First Council of Arles, [c. 8]. Concerning Arians who use their own law, it was resolved that if any come to the Church from this heresy, the priests of our faith are to question them about the creed; and if they perceive that they were baptized in the Father and the Son and the Holy Spirit, only a hand is to be imposed upon them so that they may receive the Holy Spirit. But if, when questioned, they do not answer this Trinity, let them be baptized.

C. CX. Those concerning whom it is unknown whether they were baptized are to be baptized.

Likewise Gregory III to Boniface, [letter IV]. Reason requires that you ought to baptize, according to the traditions of the Fathers, little children who have been taken from their parents and concerning whom it is unknown whether they were baptized or not, if there are none who can testify.

C. CXI. On the same matter.

Likewise from the Fifth Council of Carthage, [c. 5]. It was resolved concerning infants that, whenever no wholly certain witnesses are found who testify without doubt that they were baptized, and the infants themselves are not by reason of age fit to answer concerning the sacraments handed down to them, they are to be baptized without any scruple, lest this hesitation cause them to be deprived of the cleansing of the sacraments. Hence also our brothers, the legates of the Moors, sought counsel, because they redeem many such persons from barbarians. The same is to be done concerning churches whenever there is hesitation over their consecration; that is, they are to be consecrated without any hesitation.

C. CXII. On the same matter.

Likewise Pope Leo to Leo, Bishop of Ravenna, [letter XXXV, c. 1]. Therefore, when one who desires regeneration remembers nothing of his baptism and no other person who knows that he was consecrated can attest concerning him, nor can the one who is consecrated—indeed, we know it to be an inexpiable crime whenever, according to the dogmas of heretics and contrary to the institutions of the holy Fathers, someone is compelled to undergo twice the washing once bestowed upon those to be regenerated, while the apostolic sentence protests, preaching to us one divinity in the Trinity, one confession in faith, and one sacrament in baptism. But nothing similar is feared in this case, since what is altogether unknown to have been done cannot fall into the crime of repetition. And therefore, whenever such a person should appear, first examine the matter with solicitous inquiry, and for a long time—unless perhaps the final end threatens—investigate whether there is utterly no one who can assist the ignorance of the one who does not know by his testimony. And when it has been established that this person, who needs the sacrament of baptism, is prohibited by empty suspicion alone, let him approach without fear to obtain the grace of which he knows there is no trace in himself; nor should we fear to open for him the gate of salvation which he is never shown to have entered before.

C. CXIII. On the same matter.

The same, [letter XC, otherwise XCII, to Rusticus, c. 16]. If no indications exist among relatives and associates, none among clerics or neighbors, by which those concerning whom inquiry is made are shown to have been baptized, it is to be arranged that they be reborn, lest they manifestly perish; in their case, since what is not shown to have been done cannot by any rationale be regarded as repeated. But those who can remember that they used to come to church with their parents can remember whether they received what was given to their parents. Yet if this too is foreign to their memory, it seems that what is not known to have been conferred should be conferred upon them, because there is no rashness of presumption where there is diligence of piety.

C. CXIV. Whatever is in a mother's body is not baptized with the mother.

Likewise Augustine, *Against Julian*, [book VI, c. 5]. PART XXII. If that which is conceived in a mother pertained to her body in such a way as to be reckoned a part of it, an infant whose mother was baptized while carrying him in the womb, when some danger of death pressed, would not be baptized. But now, since he too is baptized, he assuredly did not pertain to the maternal body when he was in the womb.

C. CXV. Why one who is in his mother's womb is not baptized with her.

Likewise Isidore, *Sentences*, book I. Those who are in their mothers' wombs cannot be baptized with their mother for this reason: one who has not yet been born according to Adam cannot be regenerated according to Christ. For regeneration cannot be said to occur in one whom generation has not preceded. § 1. Let those who live criminally in the Church and do not cease to communicate, thinking that they are cleansed by such communion, learn that it profits them nothing for cleansing.

C. CXVI. On the same matter.

Likewise from the Council of Pope Martin, [c. 54]. If any pregnant woman desires to receive the grace of baptism, let her have the power whenever she wishes. For the mother shares nothing in this with the infant who is born, because each person's own will is manifested in confession.

C. CXVII. Concerning those who are baptized twice unknowingly.

Likewise from the Penitential of Theodore. PART XXIII. Those who have been baptized twice unknowingly do not need to do penance for it, except that according to the canons they cannot be ordained unless some great necessity compels.

But those who were baptized again not in ignorance, because they as it were crucified Christ again, are to do penance for seven years on Wednesday and Friday and during three Lents. If they did it because of some vice, likewise. If they thought they did it for cleansing, let them similarly do penance for three years.

C. CXVIII. Concerning those who are baptized twice deliberately.

Likewise Pope Felix III, [letter I, c. 2 and following]. Those who are established to have been bishops, presbyters, or deacons, and who are shown, whether perhaps willingly or under compulsion, to have made shipwreck of that one washing, ought—if they recover their senses—to lie in penance until the day of their departure and in every way to participate neither in the prayer of the faithful nor even of the catechumens; only lay communion is to be restored to them at death. § 1. But concerning clerics, monks, virgins of God, or secular persons, we command that this tenor be observed which the Nicene Synod established was to be observed among those who have fallen or shall fall: namely, that those who, under no necessity and from fear or danger of no thing, impiously handed themselves over to heretics to be rebaptized, if nevertheless they repent from the heart, are to be among the hearers for three years; for seven years they are to be subjected among the penitents to the hands of the priests; for two years they are in every way not to be permitted to offer oblations, but are only to be joined to the people in prayer. And let those who did not fear to deny God not be ashamed to bow their necks to him. § 2. But to boys, who are called from puberty because they are still beardless, whether clerics or laypersons, and also to similar girls, for whom ignorance of age lends support, communion is to be restored after they have been detained for some time under imposition of a hand; nor is the penance of those whom a censure excepts for correction to be awaited.

C. CXIX. Presbyters are permitted to anoint the baptized with chrism.

Likewise Pope Innocent to Bishop Decentius, [letter I, c. 3]. PART XXIV. Let presbyters—whether in the bishop's absence or in his presence when they baptize—be permitted to anoint the baptized with

chrism, but with chrism that has been consecrated by the bishop; they are not, however, to sign the forehead with the same oil, because this is owed to bishops alone when they hand on the Paraclete.

C. CXX. Presbyters are not permitted to anoint the baptized on their foreheads.

Likewise from the Register of Gregory to Januarius, Bishop of Cagliari, [book III, letter 9]. Let presbyters not presume to sign baptized infants on their foreheads with sacred chrism. But let presbyters anoint the baptized on the breast so that bishops may afterward confirm them on the forehead.

C. CXXI. It is permitted to smear the chrism cloth a second time and place it upon another baptized person.

Likewise from the Council at Beauvais. If anyone wishes to smear a cloth with chrism again and place it upon another baptized person, it is not absurd.

C. CXXII. It is not permitted to consecrate baptism with old chrism.

Likewise from the Council of Lyon. If anyone has attempted to baptize using chrism other than that new chrism which he received by the generosity or concession of his own bishop, unless death forestalls him, he is manifestly shown by the audacity of his temerity to have pronounced upon himself the sentence of his own condemnation.

C. CXXIII. They are to receive chrism only from their own bishops.

Likewise from the Council at Valencia. Presbyters who govern diocesan churches are to seek chrism before the solemnity of Easter, not from any bishops whatever but from their own, and not through a junior cleric but by themselves or through one who is of the same order.

C. CXXIV. A bishop is permitted at every time to confect chrism and send it throughout the dioceses.

Likewise from the Council of Pope Martin, [c. 51 and following]. Let a bishop be permitted at every time to confect chrism and send it throughout his dioceses, in such a way that a deacon or subdeacon is sent from the individual churches to the bishop before Easter day to receive chrism. § 1. But let a presbyter not sign infants in the bishop's presence unless perhaps it was commanded him by the bishop. § 2. Nor is a presbyter permitted to enter the baptistery before the bishop, but with the bishop, unless perhaps the bishop is absent or sick.

C. CXXV. One who receives the office of baptizing ought not to set out without chrism.

Likewise from the Council of Orange, [c. 1]. No minister who receives the office of baptizing ought to proceed anywhere without chrism, because it was resolved among us that one is to be chrismated once in baptism. But concerning one who, in baptism, through whatever necessity, was not chrismated, the priest is to be admonished at confirmation. For among us there is only one blessing of the chrism itself. We say this without prejudicing anyone, but so that chrismation may be regarded as necessary.

C. CXXVI. Before chrism is poured in, it is permitted to take water from the font for sprinkling.

Likewise the *Capitularies*, book VI, c. 77. On the holy Sabbath of Easter or Pentecost, if anyone wishes to receive consecrated water for sprinkling in his house, let him receive it before the chrism is poured in.

C. CXXVII. Whence sanctification by sprinkling took its beginning.

Likewise Cyprian, [book IV, letter 7 to Magnus]. Nor ought it to trouble anyone that the sick are commanded to be sprinkled or have water poured over them when they obtain the Lord's grace, since holy Scripture speaks through the prophet Ezekiel and says: "I shall sprinkle clean water upon you, and you shall be cleansed from all your uncleannesses, and I shall cleanse you from all your idols; and I shall give you a new heart, and I shall give a new spirit within you." Likewise in Numbers. § 1. "He who touches the corpse of a human being and for this reason is unclean for seven days is to be sprinkled with this water on the third and seventh day, and thus he shall be cleansed." § 2. If he has not been cleansed by faith in the Trinity, at the resurrection he shall be unclean among the assembly of the saints. "If he has not been sprinkled on the third day, he will not be able to be cleansed on the seventh. Everyone who touches the dead body of a human soul and has not been sprinkled with this mixture shall pollute the Lord's tabernacle and shall perish from Israel; because he has not been sprinkled with the water of expiation, he shall be unclean, and his filth shall remain upon him." And again: "And the Lord spoke to Moses, saying: Take the Levites from the midst of the children of Israel, and you shall purify them; and thus you shall perform their purification for them: you shall sprinkle them round about with the water of purification." And again: "The water of sprinkling is purification."

From this it appears that the sprinkling of water also obtains the likeness of the saving washing; and when these things are done in the Church, it is known most truly that through the faith of the recipient and the giver all things stand whole and can be consummated and perfected by the majesty of the Lord and the truth of faith. § 3. The Holy Spirit, however, is not given by measure but is poured out whole upon believers. For if the day rises equally for all and if the sun is diffused over all with like and equal light, how much more does the true sun and day in his Church bestow the light of eternal life with like equality? We see the sacrament of this equality celebrated in Exodus, when manna flowed down from heaven and, by prefiguration of future things, showed the nourishment of heavenly bread and the food of the Christ who was to come. For there each person, without distinction either of sex or age, gathered equally a *gomor*. From this it appeared that Christ's indulgence and the heavenly grace which would afterward follow were divided equally among all, without variety of sex, without distinction of years, without acceptance of person, and that the gift of spiritual grace was poured out upon all God's people. Certainly the same spiritual grace which is received equally by believers in baptism is afterward either diminished or increased in our conduct and action, just as in the Gospel the Lord's seed is sown equally; but according to the variety of the soil, some is consumed, while some, abounding unto a manifold supply of fruit of the thirtieth, sixtieth, or hundredth number, is heaped up. § 4. But if anyone is troubled by the fact that certain of those who are baptized while sick are still held by unclean spirits, let him know that the persistent wickedness of the devil prevails up to the saving water, but in baptism loses all the poison of its wickedness. We perceive an example of this in King Pharaoh, who, long resisting and lingering in his

faithlessness, was able to resist and prevail until he came to the water; but when he came to it, he was both conquered and extinguished. Blessed Paul the Apostle declares that sea to have been the sacrament of baptism, saying: "For I do not wish you to be ignorant, brothers, that our fathers were all under the cloud, and all passed through the sea, and all were baptized in Moses in the cloud and in the sea"; and he added, saying: "But all these things were figures of us." This assuredly is what occurs today: through exorcists, by a human voice and divine power, the devil is scourged, burned, and tormented; and although he often says that he will depart and release the human beings, he nevertheless lies in what he says and exercises, with the same manner of obstinacy and fraud, that which was previously enacted through Pharaoh. Yet when one comes to the saving water and to the sanctification of baptism, we ought to know and trust that there the devil is crushed and the human being dedicated to God is liberated by divine indulgence.

C. CXXVIII. Concerning those who defer receiving baptism until the end of life.

Likewise John Chrysostom on the Letter to the Hebrews, [homily XIII on c. 7]. PART XXV. When someone sins for this reason, that he may receive holy baptism at his final expiration, perhaps he does not attain it. And believe me: I do not say what I am about to say to terrify you. I have known many who suffered this, who committed many sins in the hope of baptism but departed empty near the day of death. For God gave baptism for this reason, that it might dissolve sins, not add them. But if anyone uses baptism for this purpose, that he may offend more greatly, it becomes itself a cause of negligence.

C. CXXIX. The faithlessness of parents does not harm baptized little children.

Likewise Augustine to Boniface, [letter XXIII]. PART XXVI. You ask me whether parents harm their baptized little children when they try to heal them by sacrifices to demons: how does the faith of the parents profit them when they are baptized, while their faithlessness cannot harm them? To this I answer that the power of that sacrament, that is, of saving baptism, in the holy structure of Christ's body is so great that one who has once been generated through the will of others cannot thereafter be bound by the bond of another's iniquity, to which he does not consent by any will of his own. "For both the soul of the father is mine," he says, "and the soul of the son. The soul that sins, it shall die." For the soul itself does not sin when its parents, while it is wholly ignorant, or anyone else employs the sacrileges of demons. But it drew from Adam that which was to be dissolved by the grace of that sacrament because it was not yet a soul living separately, that is, another soul, concerning which it might be said: "Both the soul of the father is mine and the soul of the son." Therefore, when the human being has now been made another in himself from the one who begot him, he is not held liable for another's sin without his own consciousness. § 1. How, then, do adults sin against a little child when, presenting him, they try to bind him with the sacrilegious bonds of demons? The soul is not common to them both so that they can also have a common fault. For fault is not shared through another's will in the same way that grace is shared through the unity of the Holy Spirit. Likewise. The regenerating Holy Spirit is common to the adults who present and to the little child who is reborn and presented. The same. Through this fellowship of one and the same Spirit, the will of those presenting profits the little child presented. For one Spirit can be in both this human being and that one, even if they do not know one another, through whom the grace of both is common. But the

human spirit through which one sins cannot belong both to this person and that, so that, while the other does not sin, the fault is nevertheless common. And by this, a little child once generated from the flesh of his parents can be regenerated by God's Spirit so that the obligation contracted from them may be dissolved. But one once regenerated by God's Spirit cannot be generated again from the flesh of his parents so that the obligation which was dissolved may be contracted again. And therefore a little child does not lose the grace of Christ once received except by his own impiety. § 2. Nevertheless, parents or whatever adults who try to bind their children or any baptized little children by the sacrileges of demons are rightly called spiritual murderers. For they do not indeed accomplish the killing in them, but, so far as lies in them, they become killers. Therefore it is rightly said to them when they are prohibited from this crime: "Do not kill your little children." For the Apostle says, "Do not extinguish the Spirit," not because he can be extinguished, but those who act so as to wish him extinguished are deservedly called, so far as lies in them, his extinguishers. § 3. Nor let that move you, etc. And below: For necessary ministries are celebrated through them. Little children are indeed presented to receive spiritual grace not so much by those in whose hands they are carried—although also by them, if they too are good believers—as by the universal society of saints and believers. For they are rightly understood to be presented by all to whom it is pleasing that they are presented and by whose holy and indivisible charity they are assisted toward communion in the Holy Spirit. Therefore the whole Mother Church, which is in the saints, does this, because as a whole she gives birth to all and as a whole to each. § 4. You seemed indeed to have proposed a most difficult question at the end of your inquiry, namely with that intention by which you are accustomed vehemently to guard against falsehood. If, you say, I place a little child before you and ask whether, when he comes to adult age, he will be chaste or a thief, or will not be one, you will without doubt answer: "I do not know"; and whether, situated in the same infant age, he thinks anything good or evil, you will say: "I do not know." Therefore, if you dare promise nothing certain concerning his future conduct or concerning his present thought, what else is it that, when they are presented for baptism, the parents answer for them as guarantors of the faith and say that they do what that age cannot think, or, if it can, it is hidden? For we ask those by whom they are presented and say: "Does he believe in God?" concerning an age which does not know whether God exists. They answer: "He believes"; and to the other things that are asked individually the answer is made thus. Hence I wonder that parents answer so confidently for the little child in these matters that they say he does such great good things when the baptizer asks at the hour when he is baptized; yet if at the same hour I add, "Will the one being baptized be chaste or a thief, or will he not?" I do not know whether anyone would dare to say, "He will be one of these," or "He will not," as he answers me without doubt that the child believes in God or turns himself to God. § 5. Behold, I do what I can. May the Lord help me to be able to do what you request. We often speak in such a way that, when Easter approaches, we call tomorrow or the day after tomorrow the Lord's Passion, although he suffered many years ago and the Passion itself was accomplished altogether only once. On the Lord's day itself we say: "Today the Lord rose," although so many years have passed since he rose. Why is no one so foolish as to accuse us of lying when we speak thus, unless because we name these days according to the likeness of those on which these things were done, so that the day which is not that very day by revolution of time but is similar to it is called that very day, and what was done not on that day but long ago is said to be done on that day because of the celebration of the sacrament? § 6. Therefore the little child, etc. And below: § 7. But when the human being begins to understand, he does not repeat that sacrament, but understands it

and will be joined to its truth by a consonant will. As long as he cannot do this, the sacrament will avail for his protection against contrary powers; and it will avail so greatly that, if before the use of mature age he migrates from this life, through the sacrament itself, with the charity of the Church commending him, he is freed by Christian aid from that condemnation which entered the world through one human being. One who does not believe this and thinks it cannot occur is assuredly an unbeliever, even if he possesses the sacrament of faith; and far better is this little child who, although he does not yet have faith in thought, nevertheless does not oppose to it the obstacle of contrary thought, whence he receives its sacrament salutarily.

C. CXXX. The faith of others saves little children in baptism.

The same to Boniface, *Against the Heresy of the Pelagians*, [book I, c. 22]. In the Church of the Savior little children believe through others, just as from others they drew the sins which are remitted in baptism; nor do you consider that those who are without the body and blood of Christ cannot have life, since he himself says: "Unless you eat my flesh, etc."

C. CXXXI. One who through baptism becomes his member participates in Christ's body and blood.

The same. No one is in any way to doubt that each of the faithful then becomes a participant in the Lord's body and blood when in baptism he becomes a member of Christ's body, and that he is not alienated from the fellowship of that bread and chalice even if, before he eats that bread and drinks the chalice, he departs from this world while established in the unity of Christ's body. For he is not deprived of participation in and the benefit of that sacrament when he himself is found to be that which the sacrament is.

C. CXXXII. Why one born of a baptized person is to be baptized.

The same, *On the Baptism of Infants*, [book II, cc. 25 and 26]. PART XXVII. If the flesh of Christ, which was without sin, was baptized for an example of imitation, how much more must the flesh of death be baptized to avoid the judgment of condemnation? But just as in the time of circumcision one who was born of a circumcised person had to be circumcised, so now one who is born of a baptized person must be baptized. § 1. For the sacrament of baptism is the sacrament of regeneration. Hence, just as one who has not lived cannot die, so one who has not been born cannot be reborn. From this it is established that no one could have been reborn in his parent when he was not yet born. And although a parent's own sins do not harm him after conversion, nevertheless they harm those who are generated from him. They do not harm the parent because he has been reborn; but unless those born of him are reborn in the same way, the things drawn from the parent will harm them, because even a renewed father carnally begets not from newness but from the remnants of oldness, and children escape through the sacrament of regeneration the condemnation of sin propagated in the flesh from the remaining oldness of their parents' whole oldness.

C. CXXXIII. In baptism all sins die.

Likewise in the *Enchiridion*, [c. 52]. In order to show that we are dead to sin, the Apostle says: "Or do you not know that all of us who have been baptized in Christ Jesus have been baptized in his death?" Therefore, if from this we are shown to be dead to sin, because we have been baptized in Christ's death, assuredly little children who are baptized in Christ die to sin because they are baptized in his

death. For it was said with no one excepted: "All of us who have been baptized in Christ have been baptized in his death"; and it was said for this reason, to prove that we are dead to sin. But do little children by being reborn die to that sin which they contracted by being born? And through this, what follows pertains to them: "For we were buried together with him through baptism into death." § 1. Therefore, to those baptized in Christ's death, in which not only adults but also little children are baptized, he says: "So reckon yourselves indeed to be dead to sin, but living to God in Christ Jesus."

C. CXXXIV. Just as baptism is denied to no one, so there is no one who does not die to sin.

The same in the same work, [c. 43]. From the newly born little child to the decrepit old man, just as no one is to be prohibited from baptism, so there is no one who does not die to sin in baptism. But little children die only to original sin, while adults die also to all the sins which by living badly they added to the original one.

C. CXXXV. In John's baptism there was no remission of sin.

Likewise in the same work, [c. 49]. Those who were baptized with John's baptism were not regenerated, but by a certain forerunning ministry of him who said, "Prepare the way of the Lord," they were prepared for him in whom alone they could be reborn. For his baptism is not only in water, as John's was, but also in the Holy Spirit, so that whoever has believed in Christ may be regenerated from him; from him Christ is generated, who had no need of regeneration. § 1. Therefore he willed to be baptized in water not so that his iniquity might be washed away, but that his humanity might be commended. For just as baptism had nothing in him to wash away, so death found nothing to punish.

C. CXXXVI. Not only original but also actual sins are remitted in baptism.

The same, *On the Baptism of Infants*, [or *On the Merits of Sins*, book I, cc. 15 and 16]. When the flesh generates, only original sin is drawn; but when the Spirit regenerates, remission is made not only of original sins but also of voluntary sins. Consequently, it can rightly be said that little children departing without baptism will be in the mildest punishment of all. But one who proclaims that they will not be in condemnation both deceives and is deceived, since the Apostle says: "Through the offense of one, all human beings unto condemnation, etc."

C. CXXXVII. Whoever is born from concupiscence is regenerated through baptism.

The same in the same work, [c. 16]. Whoever is carnally generated from obedience to the flesh and the law of sin and death needs to be spiritually regenerated, so that he may not only be led to the kingdom of God but also be freed from the condemnation of sin. Just as through the first human being they are born in sin and death, so also through Christ they are reborn in baptism in righteousness and eternal life.

C. CXXXVIII. The faith of those presenting them makes little children faithful.

Likewise in the same work, [c. 19]. Little children are rightly called faithful who in some manner confess the faith through the words of those carrying them and through the words of the same persons renounce the devil and also the world. And this occurs by the power of the sacrament and of

divine grace, which God gave to the Church. But if a little child who is baptized, upon reaching the years of reason, does not believe and does not abstain from illicit things, what he received as a little child profits him nothing.

C. CXXXIX. On the same matter.

Likewise Augustine in the book *On the Merits and Remission of Sins*, [cc. 25 and 19]. Mother Church supplies a maternal mouth to little children so that they may be imbued with the sacred mysteries, because they cannot yet believe with their own heart unto righteousness or confess with their own mouth unto salvation. Yet no one of the faithful can therefore call them unfaithful—a name assuredly derived from believing—although they themselves did not answer, but others answered for them amid the sacraments. But if they are rightly called faithful because in some manner they profess the faith through the words of those carrying them, why are they not also regarded as penitents, since through the words of those carrying them they are shown to renounce the devil and this world?

C. CXL. The charity of the Church remits or retains sins.

The same, [in tractate CXXI on c. 20 of John]. The charity of the Church, which is poured forth through the Holy Spirit in the hearts of those who are its participants, remits sins; it retains those of persons who are not its participants.

C. CXLI. Christ alone remits sins.

The same, *Against Julian*, book II. No one takes away sins except Christ alone, who is the Lamb taking away the sins of the world. He takes them away by remitting those which have been done—in which original sin also is contained—by assisting so that they are not done, and by leading to the life where they cannot be done at all.

C. CXLII. Apart from Christ's baptism, no salvation is promised to little children.

The same, *On the Baptism of Infants*. No salvation apart from baptism is promised to infants, because infants remain in darkness if through the sacrament divinely instituted for this purpose they do not pass into the number of believers.

C. CXLIII. Those baptized are incorporated into Christ and become his members.

The same in the same work, [c. 26]. Baptism avails for this: that those baptized may be incorporated into Christ as his members and buried together with him, and that those presented may through the sacrament and the charity of the faithful be reconciled to God, so that in him they may be made living, safe, liberated, redeemed, and illuminated.

[C. CXLIV.] The same, [c. 27].

But who does not know that for infants to believe is to be baptized, while not to believe is not to be baptized?

C. CXLV. Grace not only remits sins but also causes the law to be fulfilled.

The same in the book *On Free Choice*, [c. 14]. Grace, which is given through Christ, effects not only the remission of sins but also that the law may be fulfilled, that nature may be liberated, and that sin may not rule. The Spirit of grace also gives faith, which is granted by God even when not requested, so that other things may also be granted to the human being who asks. For faith is not only from free choice, but is God's gift.

C. CXLVI. The old infirmity is not entirely consumed in baptism, but loses its strength.

The same, *On the Baptism of Infants*, [book II, c. 7]. PART XXVIII. Not from the moment anyone is baptized is every old infirmity consumed in him; rather, renewal begins from the remission of all sins and from the understanding and operation of spiritual things. But the remaining things are in hope until they come to be in reality, which will occur in the resurrection. For in baptism, although full remission of sins takes place, there is not yet full newness and perfect change, because corruption still remains not only in the body but also in the mind, which is the inner human being; if newness were perfect in it, the Apostle would not say that it is renewed from day to day. Likewise, [c. 27]. § 1. We ought to remember this: that full and perfect remission of all sins takes place in baptism, but the whole human being is not changed immediately; rather, in those progressing well, as newness increases from day to day, that which is old and carnal is changed until it is so renewed that the animal infirmity of the body arrives at spiritual and incorrupt strength. § 2. But this law of sin, concerning which the Apostle says, "Let sin not reign in your mortal body," does not remain in the members of those who have been reborn as though remission had not been made for them where there is full remission of all our sins, with all the enemies by whom they were separated from God killed; but it remains in the oldness of the flesh as conquered and slain, if it does not revive through illicit consent and is not recalled to its own kingdom. But the life of the Spirit, in whose newness the baptized are reborn, is distinguished to such an extent from this oldness of the flesh and from sin which has been remitted that such persons are said even in the present to be not only not in sin, but also not in the flesh, whose desires they do not follow, but in the Spirit. But one uses the corruptible flesh well who turns its members to working well, not living according to the desires of the flesh by the law of sin which, although it has now been remitted, nevertheless remains in the oldness of the flesh. Faithful married persons use it well when, from the fact that they are in the newness of Christ, they do not permit lust to rule over them; but from the fact that they still draw the oldness of Adam, they mortally generate children who must be regenerated, with the propagation of sin to which the reborn are not held liable and from which those born are freed by being reborn. Likewise. § 3. Just as iniquitous things said, done, and thought pertain to soul and body, and although as regards their movements they have now passed and do not exist, nevertheless, once they have passed, their guilt remains unless the sin is dissolved by remission, so, while the law of concupiscence not past but still remains, its guilt is dissolved and will not exist when full remission of sin takes place in baptism.

C. CXLVII. Christ's disciples are believed to have been washed with his baptism.

The same in letter CVIII to Seleucianus. PART XXIX. When Jesus went out from Jerusalem with his disciples into the land of Judea and remained there with them, he baptized not through himself but

through his disciples, whom we understand already to have been baptized, whether with John's baptism, as some think, or—which is more credible—with Christ's baptism. Likewise. § 1. The Lord answered Peter: "He who has been washed needs only to wash his feet, but is wholly clean." From this it is understood that Peter had already been baptized.

C. CXLVIII. All the Apostles are believed to have been baptized with Christ's baptism.

The same to Vincentius Victor. If we contend that those concerning whom it is not written whether they were baptized or not departed from this life without baptism, we make a calumny against the Apostles themselves, for, apart from the Apostle Paul, we do not know when they were baptized. But that they themselves were baptized could become known to us through this: that the Lord said to blessed Peter the Apostle, "He who has been washed needs only to wash his feet."

C. CXLIX. A Catholic catechumen is preferred to a baptized heretic.

The same in book IV *On Baptism*, [c. 21]. PART XXX. I do not doubt that a Catholic catechumen burning with divine charity is to be preferred to a baptized heretic; but even within the Church itself we prefer a catechumen to a bad baptized person. Yet we do not thereby do injury to the sacrament of baptism with which the former has not yet, but the latter has already, been imbued. § 1. For deservedly the centurion, not yet baptized, is preferred to the baptized Simon. The former was filled with the Holy Spirit received even before baptism; the latter was puffed up by an unclean spirit even after baptism. Nevertheless, if Cornelius, after already receiving the Holy Spirit, had refused to be baptized, he would become guilty of contempt for so great a sacrament. § 2. But just as baptism is lacking to a good catechumen for attaining the kingdom of heaven, so true conversion is lacking to a bad baptized person. For he who said, "Unless someone is reborn of water and the Holy Spirit, he cannot enter into the kingdom of heaven," also said: "Unless your righteousness abounds more than that of the scribes and Pharisees, you shall not enter into the kingdom of heaven."

C. CL. Baptism consists not so much in the washing of the body as in the faith of the heart.

The same in the book of Prosper's *Sentences*. True baptism consists not so much in the washing of the body as in the faith of the heart, as apostolic teaching hands down, saying: "Cleansing their hearts by faith," and elsewhere: "Baptism saves—not the removal of the filth of the flesh, but the questioning of a good conscience toward God."

C. CLI. Just as certain spiritual persons are found in the Old Testament, so certain carnal persons are found in the New.

The same, *On Baptism*. Just as in the sacraments of the Old Testament certain spiritual persons lived, secretly pertaining to the New Testament which was then hidden, so also now, in the sacrament of the New Testament which has now been revealed, certain animal persons live who, because they are unwilling to advance to perceive the things that are of the Spirit of God, as the apostolic discourse exhorts, will pertain to the Old Testament. But if they advance, even before they attain, by the very approach and progress they pertain to the New; and if, before they become spiritual, they are snatched from this life, preserved through the sanctity of the sacrament they are counted in the land of the living. Nor do I find what can be found more true in what is written: "Your eyes saw my

imperfection, and in your book all shall be written." Likewise, [book III, c. 14]. § 1. When the integrity and sanctity of the sacrament is treated, it makes no difference what the person who receives the sacrament believes or with what kind of faith he is imbued. It indeed makes a very great difference to the way of salvation, but no difference to the question of the sacrament. Likewise. § 2. It is manifest that it can happen that the sacrament of baptism remains whole in someone whose faith is not whole. Likewise, [c. 15]. § 3. If it were possible for individuals to be questioned diligently, there would perhaps be as many diversities of opinions as human beings are numbered. "For the animal human being does not perceive the things that are of the Spirit of God." Do they therefore not receive the sacrament whole? Or therefore, if they advance and amend the vanity of their carnal opinions, must what they had received be repeated anew? Each person receives according to his faith, but as much as he grasps, with the mercy of God governing.

C. CLII. Adam was going to die not by necessity of nature but by the desert of sin.

Likewise from the Council of Milevis, at which Augustine and Anselm, legate of the Roman Church, were present, against the Pelagians, [c. 1]. PART XXXI. Therefore it pleased all the bishops who were in this holy synod to establish these things which were defined in the present council: that whoever says that Adam, the first human being, was made mortal in such a way that, whether he sinned or did not sin, he would die in the body, that is, would depart from the body, not by the desert of sin but by necessity of nature, let him be anathema.

C. CLIII. Little children draw from their parents not only punishment but also fault.

Likewise from the same Council, [c. 2]. It was resolved that whoever denies that newborn little children are to be baptized from their mothers' wombs, or says that they are baptized for the remission of sins but draw nothing from Adam of original sin which is to be expiated by the washing of regeneration—whence it follows that in them the form of baptism "for the remission of sins" is understood not as true but as false—let him be anathema; because what the Apostle says, "Through one human being sin entered the world, and through sin death, and thus it passed into all human beings, in whom all sinned," is to be understood in no other way than the Catholic Church diffused everywhere has always understood it. For on account of this rule of faith, even little children who have not yet been able to commit any sins in themselves are therefore truly baptized for the remission of sins, so that what they drew by generation may be cleansed in them by regeneration.

C. CLIV. Grace both remits sins and assists so that they are not repeated.

Likewise, [c. 3]. It was resolved that whoever says that the grace of God by which a human being is justified through Jesus Christ our Lord avails only for the remission of sins which have already been committed, and not also for assistance so that they are not committed, let him be anathema.

C. CLV. Grace teaches what sin is and causes it to be avoided.

Likewise, [c. 4]. Whoever says that the grace of God through Jesus Christ our Lord assists us not to sin only for this reason—that through it the understanding of the commandments is revealed and opened to us, so that we may know what we ought to pursue and what to avoid—but that through it

we are not granted also to do, or to be able to do, what we have learned must be done, let him be anathema.

C. CLVI. Without divine grace the commandments cannot be fulfilled.

Likewise, [c. 5]. PART XXXII. It was resolved that whoever says that the grace of justification is given to us so that what we are commanded to do by free choice we can fulfill more easily through grace, as though, even if grace were not given, we could—indeed not easily, but nevertheless even without it—fulfill the divine commandments, let him be anathema.

Distinction V

GRATIAN.

C. I. After baptism the sacrament of confirmation is to be conferred.

Likewise Pope Urban to all Christians, [letter I, c. 7]. PART I. All the faithful ought to receive the Holy Spirit after baptism through the imposition of the bishops' hands, so that they may be found full Christians, because when the Holy Spirit is poured in, the faithful heart is enlarged toward prudence and constancy.

C. II. What the Holy Spirit confers in baptism and what in confirmation.

Likewise Pope Melchiades, [in the letter to the bishops of Spain, c. 2]. The Holy Spirit, who descends with saving descent upon the waters of baptism, gives fullness at the font for innocence and in confirmation supplies increase for grace. And because those who will live their whole age in this world must walk among invisible enemies and dangers, in baptism we are regenerated for life; after baptism we are confirmed for battle. In baptism we are washed; after baptism we are strengthened. And although the benefits of regeneration suffice for those who will pass on immediately, nevertheless the aids of confirmation are necessary for those who will live. Regeneration by itself saves those who are soon to be received in the peace of the blessed age; confirmation arms and equips for the contests of this world and battles those who are kept back. But one who after baptism arrives at death unstained, with the innocence acquired, is confirmed by death, because after death he can no longer sin.

C. III. The sacrament of the imposition of a hand is more dignified than the sacrament of baptism.

The same to the bishops of Spain. Concerning those things about which you asked to be informed, that is, whether the sacrament of the bishops' imposition of a hand or baptism is greater, know that each is a great sacrament; and just as the one has been assigned to the greater persons, that is, the supreme pontiffs, and cannot be completed by lesser persons, so also it is to be venerated and held with greater veneration. But these two sacraments are so joined that, unless death intervenes, they can in no way be separated from one another, and one cannot be perfected without the other.

C. IV. The sacrament of the imposition of a hand can be completed by none other than bishops.

Likewise Pope Eusebius, [letter III to the bishops of Tuscany and Campania]. The sacrament of the imposition of a hand is also to be held with great veneration, because it cannot be completed by others except the supreme priests; nor in the time of the Apostles is it read or known to have been performed by others than the Apostles themselves; nor can it ever be completed or ought it to be done by others than those who hold their place. For if it is presumed otherwise, let it be regarded as ineffectual and empty, nor shall it ever be reckoned among the ecclesiastical sacraments.

C. V. Why the sacrament of confirmation is handed to one baptized.

Likewise Rabanus, *On the Instruction of Clerics*, [book I, c. 30]. Finally, through the imposition of a hand by the supreme priest, the Paraclete is handed to the baptized person so that he may be strengthened through the Holy Spirit to preach to others the same gift which he obtained in baptism, having been endowed through grace with eternal life. For the baptized person is signed with chrism by the priest upon the crown of the head, but by the pontiff upon the forehead, so that in the first anointing the descent of the Holy Spirit upon him may be signified for consecrating a dwelling to God; and in the second, that the sevenfold grace of the same Holy Spirit, with every fullness of holiness, knowledge, and power, is declared to come into the human being.

C. VI. Only those fasting are to come to confirmation.

Likewise from the Council of Orléans, c. 3. Let those of mature age come fasting to confirmation, and let them be admonished first to make confession so that, clean, they may be able to receive the gift of the Holy Spirit; and because one will never be a Christian unless he has been chrismated in episcopal confirmation.

C. VII. Bishops are to confirm the baptized only while fasting.

Likewise from the Council of Meaux, c. 6. Let bishops hand on the Holy Spirit through the imposition of hands only while fasting, except to the sick and those in danger of death. But just as baptism ought to be celebrated by those fasting at two times, namely Easter and Pentecost, so it is fitting that the handing on of the Holy Spirit be celebrated by fasting pontiffs.

C. VIII. No one is to be confirmed a second or third time.

Likewise from the Council of Tarragona, c. 6. It was reported to us that certain persons among the people are confirmed twice or three times or more by the same bishops, although the bishops are ignorant of this. Hence it seemed to us that the same confirmation, just like baptism, ought by no means to be repeated, because it was decreed that those baptized or confirmed twice or more are to serve most religiously not the world but God alone under a regular or clerical habit.

C. IX. On the same matter.

Likewise Gregory II, [letter IV to Boniface]. Concerning a human being who has been confirmed by a pontiff, such repetition anew is to be prohibited.

C. X. All sacraments are perfected by the sign of the cross.

Likewise Stephen. PART II. Surely all chrismations of the priestly ministry are perfected by the figure of the cross? Surely the water of baptism, unless sanctified by the cross, does not release sins? And, to pass over the rest, without the sign of the cross who ascends to a grade of the priesthood?

C. XI. The possessed are to be exorcized every day.

Likewise from the Fourth Council of Carthage, [c. 90 and following]. PART III. Every day let exorcists impose hands upon the possessed, but let the possessed sweep the floors of the houses of God. While they sit in the house of God, let daily sustenance be ministered to them by the exorcists at the proper time.

C. XII. From what things neophytes ought to abstain.

Likewise from the same, [c. 86]. Let neophytes abstain for some time from richer feasts, spectacles, or spouses.

C. XIII. Concerning the order of offices.

Likewise from the Council of Agde, [c. 30]. PART IV. It is fitting that the order of the Church be preserved equally by all. Hence it is to be established that, as is done everywhere, after the antiphons, conferences are to be spoken by bishops or presbyters; the morning or evening hymns are to be sung every day; and at the conclusion of the morning or evening masses, after the hymns, short passages from the psalms are to be said; and after a collect the people are to be dismissed by the bishop at evening with a blessing.

C. XIV. On the same matter.

Likewise from the Council of Girona, [c. 10]. It has always been resolved that this be observed: that on all days after matins and vespers the Lord's prayer is to be pronounced by the priest. Likewise Gregory VII in a general synod:

C. XV. On the same matter.

On the day of the Resurrection through Saturday *in albis*, and on the day of Pentecost through its Saturday, we sing and read at nocturns only three psalms and three lessons according to ancient custom. On all other days throughout the whole year, if there is a feast, we say nine lessons. But on other days we recite twelve psalms and three lessons. On Sundays—except Easter and Pentecost—we celebrate eighteen psalms and nine lessons. But those who on ordinary days wish to celebrate only three psalms and three lessons are proved to do this not from the rule of the holy Fathers but from weariness. But we, both investigating the Roman order and imitating the ancient Fathers according to the ancient custom of our Church, establish that it be done as we have noted above.

C. XVI. Concerning the observance of Lent.

Likewise from a homily of Pope Gregory. PART V. Lent is to be observed with the highest observance, so that the fast during it—apart from Sundays, which are subtracted from abstinence—is in no way relaxed unless sickness impedes someone, because those days are the tithe of the year. Therefore, from the first Sunday of Lent until the Lord's Easter, six weeks are counted, which assuredly make

forty-two days; when six Sundays are subtracted from them for abstinence, no more than thirty-six days remain in abstinence. For example, if the year revolves through 365 days and we afflict ourselves for thirty-six days, we give God as it were the tithes of the year. But so that the sacred number of forty days, which our Savior consecrated by a sacred fast, may be completed, let the four days of the preceding week be taken to supply the forty days, that is, Wednesday, which is designated the head of the fast, and the following Thursday, Friday, and Saturday. Unless we join these four days to the preceding thirty-six, we do not have forty days in abstinence. We are also commanded by almighty God to give tithes of all our goods.

C. XVII. Lawful fasts are not to be relaxed without a probable necessity.

Likewise Pope Eusebius. Fasts established in the Church by priests are not to be relaxed without reasonable necessity.

C. XVIII. Daily fasts are to be preferred to doubled or tripled fasts.

Likewise Jerome. I do not prescribe weeks, I do not prescribe doubled fasts, but let us at least pass individual days without the luxury of foods.

C. XIX. On the same matter.

The same. Let your fasts be daily, with refection fleeing satiety. For it profits you nothing to carry an empty belly after two or three days have passed if it is stuffed to the same degree.

C. XX. On the same matter.

The same. Let your fasts be pure, continuous, and moderate, that is, to hunger daily and dine daily. The Apostle says: "Do not still drink water, but use a little wine on account of your infirmities." Fasting heals the wounds of the offender and sanctifies those who have been healed.

C. XXI. The precepts of medicine are contrary to the divine condition.

Likewise Ambrose on Psalm 130. PART VI. The precepts of medicine are contrary to the divine condition. They call one back from fasting, do not permit one to keep vigil, and draw one away from every application of meditation. Therefore, one who has given himself to physicians denies himself to himself.

C. XXII. In how many ways the vice of gluttony touches us.

Likewise Gregory in the exposition of blessed Job, [book XXX, c. 27]. The vice of gluttony tempts in five ways. For sometimes it anticipates the times of need; sometimes it does not anticipate the times but seeks richer foods; sometimes it demands that the things to be consumed be prepared more carefully; sometimes both the quality of the foods and the time are fitting, but in the very quantity of consuming it exceeds the measure of refection. Sometimes what it desires is even more contemptible, and yet it sins worse by the very heat of immeasurable desire.

C. XXIII. Without purity of mind, fasts and prayers do not profit.

Likewise Pope Pius, [letter I]. For it profits a human being nothing to fast and pray and perform other good works of religion unless the mind is restrained from iniquity and the tongue from detractions.

C. XXIV. A moderate good is not to be preferred to a great one.

Likewise Jerome. One errs not moderately who prefers a moderate good to a great good. Does not a rational human being lose his dignity if he prefers either fasting to charity or vigils to soundness of sense, so that, on account of immoderate and indiscriminate abstinence and the singing of psalms or offices, he incurs the mark either of madness or of sadness? Can God be swayed by a multitude of words like a human being? For God is to be prayed to not only with words, but with the heart. Consequently, the singing of five psalms with purity and serenity of heart and spiritual cheerfulness is better than the chanting of the psalter with anxiety and sadness of heart. Therefore, when a psalm or mass is said for one hundred souls, each receives nothing less than if it were said for any one of them. Accordingly, let those who withdraw from the body the things that are necessary hear what the Lord speaks through the Prophet: "I am the Lord, hating robbery in a holocaust." One offers a holocaust from robbery who immoderately afflicts the body either by excessive want of foods or deprivation of sleep.

C. XXV. To abstain not from foods but from iniquities is the great and general fast.

Likewise Augustine on John, [tractate XVII]. The great and general fast is to abstain from iniquities and from the illicit pleasures of the age; this is the perfect fast. § 1. In this age we celebrate, as it were, a Lent of abstinence when we live well, when we abstain from iniquities and illicit pleasures. But because this abstinence will not be without reward, we await that blessed hope and the revelation of the glory of the great God and our Savior Jesus Christ. In that hope, when the reality has been made from hope, we shall receive the denarius as reward. § 2. Therefore the denarius, which receives its name from the number ten, is rendered and, joined to forty, makes fifty. Hence with labor we celebrate Lent before Easter, but with gladness, as though the reward has been received, the Fifty Days after Easter. For to this saving labor, as it were, of good work, which pertains to the number forty, is added the ten of rest and happiness so that fifty may be made. The Lord himself signified these things much more openly when, after the resurrection, he dwelt with his disciples for forty days, but on the fortieth day, when he had ascended into heaven, after ten days had passed he sent the reward of the Holy Spirit.

C. XXVI. Necessity does not make a robber or thief, but will does.

Likewise from the sayings of Apollonius. When the disciples, passing through the fields, plucked ears and ate them, Christ's own voice calls them innocent because they did this compelled by hunger.

C. XXVII. Not necessity but will makes perseverance.

Likewise Jerome, [on c. 7 of Hosea]. Whatever is done from necessity is quickly dissolved; what is seized by will perseveres.

C. XXVIII. Temperance in foods engenders health; abundance engenders the contrary.

Likewise John Golden-Mouth, [homily XXIX on c. 12 of the Letter to the Hebrews]. Nothing is so pleasant as food well digested or thoroughly cooked. Nothing so produces health, nothing so produces keenness of the senses, nothing so puts sickness to flight, as moderate refection; for sufficiency together with nourishment produces both health and pleasure, but from abundance it

makes disease, introduces troubles, and generates and produces illnesses. For what hunger does, fullness of foods also does—but much worse. Hunger indeed carries off a human being in a few days and frees him from this penal life; but excess of foods consumes the human body, causes it to putrefy, and wastes it with prolonged sickness, and then consumes it with a cruel death.

C. XXIX. Delicacies of foods harm if they superabound.

Likewise Jerome, [*Against Jovinian*, book II]. Let us not take such foods as we either digest with difficulty or, once they have been eaten, grieve to have acquired with great labor and lost. Vegetables, fruits, and legumes are both easier to prepare, do not need the art and expenses of cooks, and sustain the human race without care when taken moderately—because that which lacks enticements of gluttony is not devoured greedily—and they are thoroughly cooked with easier digestion. For no one is burdened to the swelling of the belly by one or two foods, and those cheap, which swelling is conceived from a diversity of meats and pleasure of flavor. When dishes smoke with various odors, they draw persons as though captive to their consumption by hunger that must be filled. Hence illnesses too are stirred up by excessive satiety; many are remedied from the impatience of gluttony by vomiting, and what they shamefully ingested they cast out more shamefully. Hippocrates teaches in the *Aphorisms* and *Epidemics* that thick and obese persons who have fulfilled the measure of growth, unless they are quickly diminished by the letting of blood, break forth into paralysis and the worst kinds of diseases; and that for this reason a reduction is necessary, so that they may again have room into which they can grow. For the nature of bodies does not remain in one state but always either grows or decreases, and an animal cannot live unless it is capable of growing. Hence Galen also, a most learned man and interpreter of Hippocrates, says in his *Exhortation to Medicine* that athletes, whose life and art is fattening, can neither live long nor be healthy, and that their souls, enveloped by excessive blood and fat as though by mud, breathe forth nothing subtle, nothing heavenly, but always think about meats, belching, and the maw of the belly.

C. XXX. Fasts heal the infirmities of many.

The same. We read that certain persons laboring from articular disease and the humors of gout recovered when, by the confiscation of their goods, they were reduced to a simple table and poor foods. For they lacked solicitude for managing a household and profusion of feasts, which break both body and soul. Horace mocks the appetite for foods which, once consumed, leave repentance.

C. XXXI. We ought to abstain from meats on Saturdays.

Likewise Gregory VII, [in the synod celebrated at Rome in the sixth year of his pontificate, c. 8]. PART VII. Because Saturday was held by our holy Fathers to be celebrated in abstinence, we, following their authority, salutarily admonish that whoever desires himself to be a participant in the Christian religion abstain from the eating of meats on that day, unless a greater feast intervenes or infirmity impedes.

C. XXXII. A monk is not permitted to taste meat.

Likewise Bishop Fructuosus. PART VIII. Permission neither to taste nor consume meat is granted to any monk, not because we judge God's creature unworthy, but because abstinence from meat is considered useful and fitting for monks, with the moderation of piety toward the sick nevertheless

preserved. § 1. But if any monk violates this and presumes to eat meats contrary to the sanction of the rule and the usage of the ancients, he shall be subjected to confinement and penance for the space of six months.

C. XXXIII. Concerning the daily works of monks.

Likewise Jerome to the monk Rusticus. Let the book of the psalter never depart from your hand or your eyes; let prayer without interruption be repeated word for word. Let the sense keep vigil, not lying open to wandering thoughts; let body and mind alike be stretched toward the Lord. Conquer anger by patience. Love the knowledge of the Scriptures, and you will not love the vices of the flesh. Nor let your mind be vacant for various disturbances which, if they settle in your breast, will rule you and lead you to the greatest offense. Do some work so that the devil may always find you occupied. If the Apostles, having the power to live from the Gospel, labored with their hands so as not to burden anyone and bestowed relief upon others from whom they ought to reap carnal things for spiritual things, why do you not prepare what will serve for your own uses? Either weave a little basket from rushes, or plait a basket from pliant twigs. Let the earth be hoed; let little plots be divided by an even boundary, in which, when the seeds of vegetables have been cast or plants set in rows, channels of water may be led. Here you shall stand as spectator of those most beautiful verses: "Behold, from the brow of the sloping path he draws forth the wave; falling, it stirs a hoarse murmur over smooth stones and tempers the parched fields with springs." § 1. Let fruitful trees be grafted either with buds or shoots, so that a short time afterward you may pluck the sweet fruits of your labor. Construct hives for bees, to which the Proverbs of Solomon send you; learn the order of monasteries and royal discipline in their little bodies. Let linen nets for catching fish also be woven. And let books be written, so that the hand may both work for food and the soul be satiated by reading. "Every idle person is in desires." The monasteries of the Egyptians hold this custom: that they receive no one without work and labor, not so much on account of the necessities of sustenance as on account of the soul's salvation, lest they wander through pernicious thoughts and, in the likeness of fornicating Jerusalem, spread their feet to every passerby. And in what follows. § 2. What, then? Will all who dwell in cities perish? Behold, they enjoy their own goods, minister to churches, go to baths, do not disdain ointments, and live amid the flower of all things. To this I answered before and now answer briefly: in the present little work I am not discussing clerics, but instructing a monk.

C. XXXIV. Canons are permitted to do nothing without the license of their prelate.

Likewise in book V of the *Capitularies*, [c. 115]. PART IX. In all things, therefore, insofar as human frailty permits, we decree that canonical clerics live canonically, observing the teaching of divine Scripture and the instructions of the holy Fathers, and presume to do nothing in a disorderly way without the license of their bishop or their master. In each episcopate let them eat and sleep together where they have the means of doing this. Let those who receive stipends from ecclesiastical goods remain in their cloister; and each day in the morning at prime let them come to the reading and hear what is commanded them. Likewise, at table let them hear the reading and render obedience according to the canons to their masters.

C. XXXV. Presbyters who assemble together are above all to avoid drunkenness and revelries.

Likewise from the Council of Nantes, [c. 10]. PART X. Whenever presbyters assemble for the anniversary, thirtieth, or third day of someone deceased, or when presbyters gather for a collection on any summons, let none of them presume in any way to become drunk; nor, when entreated, to drink for love of the saints or of the soul itself, or to compel another to drink, or to gorge himself at another's entreaty; nor let him presume to bring forth or sing disorderly applause and laughter or empty tales there; nor are they to permit shameful jests to be performed before them with a bear or dancing women; nor are they to consent for masks of demons to be carried before them, because this is diabolical and prohibited by the sacred canons.

C. XXXVI. At what spectacles clerics ought to be present.

Likewise from the Council of Laodicea, [c. 54]. Ministers of the altar or any clerics ought not to be present at any spectacles which are exhibited either at weddings or dinners, but before the theatrical performers enter they ought to rise from the banquet and depart.

C. XXXVII. A cleric or layperson is not to go on pilgrimage without the bishop's command.

Likewise from the same, [cc. 42 and 41]. PART XI. A minister of the altar or any cleric ought not to set out on pilgrimage apart from the bishop's command. § 1. Likewise, a layperson ought not to set out anywhere without canonical letters, that is, a *formata*.

C. XXXVIII. Women ought not to use cosmetic coloring.

Likewise Augustine to Possidius and the brothers who are with him, [letter LXXIII]. PART XII. To color oneself with pigments so as to appear either redder or whiter is an adulterous deception by which I do not doubt that even husbands themselves do not wish to be deceived; for women are permitted to adorn themselves for their husbands alone, by indulgence, not by command. For the true adornment, especially of Christian men and women, is not only no lying cosmetic and not even the display of gold and clothing, but good conduct. § 1. But the execrable superstition of amulets—which are reckoned to include even those hung from the top of one ear of men—is employed not to please human beings but to serve demons.

C. XXXIX. That the Holy Spirit proceeds from the Father and the Son.

Likewise from the Creed of the Council of Ephesus of two hundred bishops, which was held against Nestorius. PART XIII. Concerning the Spirit, the Lord says in the Gospel: "He shall glorify me." Understanding this most rightly, we confess that the one Christ and Son attained glory from the Holy Spirit not as though needing the glory of another, because his Spirit is neither better than nor superior to him; but because, when performing human works for the demonstration of his divinity, he used the power of his own Spirit, he is said to have been glorified by him, because his own power or any discipline glorifies each person. For although his Spirit is in his own substance and a property is understood in the person according to the fact that he is the Spirit and not the Son, nevertheless he is not alien to him. For he has been called the Spirit of truth, and Christ is the truth. Hence he proceeds from him similarly as from God the Father. Finally, this same Spirit, also performing glorious miracles through the hands of the holy Apostles, glorified the Lord Jesus Christ after he

ascended into heaven. For Christ is believed by nature to exist as God, effecting power through his Spirit; and therefore he said: "He shall receive of mine and announce it to you."

C. XL. On the same matter.

Likewise Didymus in book II *On the Holy Spirit*, against the error of the Greeks. The Savior, who is also the truth, says: "For he shall not speak from himself," that is, without me and without my judgment and that of the Father, because he is inseparable from my will and the Father's. And further. § 1. Because he is not from himself but is from the Father and from me. For this very thing—that he subsists and speaks—is from the Father and from me. "I speak the truth," that is, I inspire the things he speaks, since he is the Spirit of truth. But "to say" and "to speak" in the Trinity is to be understood not according to our custom by which we converse and speak to one another, but according to the form of incorporeal natures, and especially of the Trinity, which brings its will into the hearts of believers and implants it in the hearts of those who are worthy to hear it. § 2. Therefore, plainly, for the Father to speak and the Son to hear, or conversely for the Father to hear the Son speaking, signifies that the Father and the Son are of the same nature and that there is agreement in the Father and the Son. The Holy Spirit, who is the Spirit of truth and the Spirit of wisdom, cannot hear the Son speaking things he does not know, since he is that very thing which is uttered by the Son, that is, God proceeding from God, the Spirit of truth proceeding from truth, the consoler flowing from the consoler. Finally, lest anyone separate him from the fellowship and will of the Father and the Son, it is written: "For he does not speak from himself, but as he hears, so he speaks." Similar to this the Savior also says of himself: "As I hear, I judge," and elsewhere: "The Son can do nothing from himself except what he sees the Father doing."