

Institutiones Morales Alphonsianae, Volume I - Part I - English Translation

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Institutiones Morales Alphonsianae, Volume I - Part I

On the First Principles of Moral Theology

Part First

On the First Principles of Moral Theology

Prologue

9. I. On the ultimate end of man. It belongs to dogmatic theology to institute the question concerning the ultimate end of man; and in truth, among the authors versed in that science, it is possible to find arguments on this matter at once splendid and profound. We wish to note the following for remembrance.

1. The end of God the Creator is His intrinsic glory, that is, His perfection. For the Lord has wrought all things for Himself (Prov. 16:4). In other words, God created all things, not that from this He might obtain usefulness, but that He might manifest His perfection, His goodness, through goods communicated to creatures. So the Vatican Council (Sess. 3, c. 1).
 2. The ultimate end of man is primarily the extrinsic glory of God; secondarily, however, perfect beatitude in God. The reason is clear: for that must be the primary ultimate end of man which God Himself intends in creating him and all other things. But on account of His extrinsic glory (that is, that He may be known, praised, loved), God has wrought all things, as Sacred Scripture often testifies. But in procuring this extrinsic glory, man finds perfect beatitude. For the attempts of man are vain when he seeks beatitude among created things, which are not of themselves desirable, nor stable, nor open to all. Man attains true beatitude when especially those faculties which are proper to him are perfected, namely intellect and will. But since intellect and will are capable of universal truth and good, it follows that man will attain perfect beatitude only in the knowledge and love of God. So all theologians. Cf. Palmieri, Mazzella, Satolli, Van Noort, Herrmann, in the Treatise *On God the Creator*, article on the end of creation. This is the ultimate end of man. It is the noble office of moral theology to indicate both the means apt for the end, and the dangers and snares by which man is surrounded, and which attempt to turn him away from attaining the end.
- II. Means to the end; order of things to be said. The means to the end are human acts, by which the knowledge and love of God, in which beatitude consists, are exercised or prepared. Concerning these in the body of the work.

The first principles of moral theology regard the morality of these human acts in general. Since this morality is the relation of a human act to its rule, it is expedient that in this general part each term of the relation be weighed separately: namely the rule, and the thing ruled.

And first, as regards the RULE, it is necessarily twofold, namely proximate and remote. The proximate rule is the law of God subjectively taken, that is, conscience, which immediately and universally directs the act of any man whatever. But the remote rule is the divine law considered objectively, or in itself; and this is what must direct conscience itself. For conscience, that it may be a right and perfect rule of human acts, must itself also be directed according to the norm of the various laws which God prescribes to the human will, whether directly or indirectly.

Then as regards the THING RULED, that is, human acts, we shall consider these under a twofold aspect: 1. insofar as they are human, that is, insofar as they proceed deliberately from the will of man and are imputable to him; 2. insofar as they are good or evil, that is, conformable to the rule or discrepant from it.

10. With St. Alphonsus and most of the older theologians, we shall assign the first place to the treatise on Conscience, which is the subjective norm of acting; there will follow the treatise on Laws, or on the objective norm which must inform conscience itself. In the third place we shall speak of the matter to be ruled, or of Human Acts; to this treatise we shall subject the treatise on Sins, because the one is intimately connected with the other, and the former is, as it were, an introduction to the latter.

Finally we shall assign the last place, as though to an appendix, to the treatise on Virtues in general; this treatise is useful, indeed in a certain way necessary, that the matter of human acts and of the laws of the Decalogue may be known more deeply.

Surely logical order seems to demand this for itself: that the treatise on Virtues be placed before the treatise on Vices and Sins, since logically good is prior to evil; but since those things are chiefly to be considered by the moral theologian which are opposed to the ultimate end, namely sins, there is sufficient reason why the aforesaid order should be inverted. Besides, it is fitting that the two treatises on Human Acts and on Sins not be separated, and that the generic notions concerning virtues immediately precede the treatment of the Decalogue, which is wholly concerned with virtues and with the offices of virtues prescribed by the law of God.

Therefore the general treatises will follow in this order:

Treatise I. On Conscience.

Treatise II. On Laws.

Treatise III. On Human Acts.

Treatise IV. On Sins.

Treatise V. On Virtues in General.

Treatise I

On Conscience

Proemium

On Conscience in General

St. Thomas, *Eth.*, VI, 1, 2; 3 D. 33, q. 1; 1.2, q. 19, a. 5; q. 57, a. 5; St. Alphonsus, *Theol. mor.*, 1; H. Ap., 1; John of St. Thomas (ed. Vives), VI, q. 31, disp. 22; Sylvius-Maurus, in *Eth.*, VI; Suarez, in 1.2, tr. 3, disp. 12, sect. 1, 2, 4; the moral works of more recent writers: Lehmkuhl, Aertnys, Noldin, Tanqueray, Gopfert, etc.; Beaudouin-Gardeil, *de Consc.*; Bouquillon, *Theol. mor. fund.* (ed. 3).

11. Definition. Conscience is a practical judgment or dictate of reason, by which we judge what here and now is to be done as good, or avoided as evil (I, 2).

It is called: a practical judgment, namely one which directs the one operating in acting; by which we judge, that is, by which without any fluctuation of mind we affirm; what here and now, that is, in the individual case, and with all circumstances considered; is to be done, that is, ought or can be done; as good, or avoided as evil; by these words is expressed the formal respect under which the agent exercises his judgment concerning acts to be placed. For he does not judge concerning the utility or facility of an action or omission, but concerning its relation to the moral law, namely whether it is according to it, against it, or beside it (1.2, q. 19, a. 5).

12. Division. 1. Conscience, by reason of the acts to which it is referred, is either antecedent or consequent. Antecedent conscience is that which precedes human acts, so as to compose them according to the norm of right. Consequent conscience is a judgment concerning past acts; it approves or disapproves, praises or condemns with remorse; it is not conscience properly so called.

All the more, that habit by which the one who is endowed with it promptly obeys the dictate of conscience, and is called a conscientious man, is not conscience properly so called.

Antecedent conscience obtains various names according to its various office. When it judges what is to be avoided as evil, it is called prohibiting conscience; when it judges what is to be done as a good of precept, it is called prescribing conscience; finally, when it judges that something has been left to free choice, it is called permitting conscience; and it is also named counseling conscience, when it declares a thing to be better and of counsel.

2. By reason of the object, conscience is true or erroneous; by reason of the subject, it is certain or doubtful. These will soon be explained more fully. Conscience, whether true or certain, is prohibiting, or prescribing, or permitting or counseling, as was said above.
3. That the nature of conscience may be better known, it is pleasing to note the following.

I. Conscience is an act of the practical intellect.

1. It is an act, not a power or a habit; for conscience is said as though knowledge with another, because it is the application of knowledge or notice to a particular action: but the application of knowledge to something is made by some act. Besides, conscience can be put aside and is easily changed, which cannot be said of a power (St. Thomas, P. I, q. 79, a. 13).
2. It is an act of the intellect, not of the will; for it goes before the will, and signifies to it what in a particular case is good or evil, which evidently pertains to the cognitive faculty.

3. It is an act of the practical intellect. For according to the twofold respect under which the intellect is considered, it is called either speculative or practical. The speculative or theoretical intellect is that which rests in the contemplation of its object, whether the matter concerns fact (that is, the existence, nature, properties, or effects of a thing), or right (that is, law, or its disposition, extension, or interpretation). The practical intellect is that which extends or applies knowledge to work (ibid., a. 11). Cf. Cajetan, 1.2, q. 57, a. 5; Beaudouin, work cited; John of St. Thomas, *Logica*, P. II, q. 1, a. IV.

From these things it is understood what, in things operable, is a speculative judgment and what is a practical judgment. A speculative judgment, when operations are in question, is that by which the intellect declares that the thing objected to it, in itself, is objectively good or evil, for example, this war is just or unjust. A practical judgment is that by which the intellect decrees that the same thing, the present circumstances considered, here and now, subjectively, can or ought actually to be chosen or rejected, for example, it is lawful for me to fight in this war.

- II. Although synderesis, moral science, and prudence concur in forming conscience, nevertheless conscience differs from them.

It differs from synderesis. Synderesis is not an act but a habit naturally instilled, by which we know the first principles of things to be done, for example: good is to be done, evil is to be fled; God is to be worshiped; what you do not wish to be done to you, do not do to another (St. Thomas, place cited, a. 12).

It differs from moral science. This also is a habit of the speculative intellect, but acquired, and is concerned with general conclusions deduced from first principles in this or a similar way: synderesis brings forth the first principle: evil is to be fled; science subsumes: theft is evil, and concludes: therefore it is not lawful to steal. Therefore moral science is concerned with the objective and material morality of an act; but conscience with the subjective and formal morality of the same.

It differs also from prudence. Prudence is a habit of the practical intellect, and has a broader scope than conscience. For prudence, besides those parts which it obtains in forming the dictate of conscience, especially in weighing the peculiar circumstances of the fact, also inquires into the means suitable for attaining the end. Thus, for example, when a superior must correct some guilty person, conscience indeed declares the obligation of correcting; but prudence suggests how one must proceed, that the end, namely amendment, may be obtained (Billuart, *de act. hum.*, Diss. 5, a. 1).

- III. Conscience is a judgment concluding from two premises, whether the syllogism is made implicitly or explicitly. Synderesis or science furnishes the major premise, which declares the disposition of the law; the particular fact to which the application of the law must be made supplies the minor; prudence watches lest either be asserted rashly; the conclusion is the practical judgment which is called conscience. For example: A superior legitimately commanding must be obeyed. But this superior commands legitimately. Therefore he must be obeyed (St. Thomas, *de Verit.*, q. 17, a. 2).
14. Order of things to be said. Conscience, as we intimated above, must, on the part of the object, be conformable to truth; but on the part of the subject, it must rest upon moral certitude. Whence there must be treated: 1. true conscience, and erroneous conscience opposed to it; 2. certain conscience, and doubtful conscience opposed to it. But since the question of solving doubts arising from the occurrence of probable opinions is of particular importance, it must be treated specifically. Hence: 3. probable conscience.

Chapter I

On True and Erroneous Conscience

15. Definition. True conscience is that which dictates the truth of the thing. It rightly concludes from true principles that something is lawful or unlawful, which in reality is such. Erroneous conscience is that which dictates the false as true, whether it assumes for itself a false principle, or deduces false conclusions from a true principle (I, 3).

True conscience, strictly speaking, is not the same as right conscience, although it is sometimes used promiscuously; for true is said according to what is, but right according to what is apprehended. Namely, TRUE is that which in reality is such in itself; RIGHT is that which is done according to the rules of prudence, in other words, that which truly and really is conformed to right appetite, as St. Thomas says (*Eth.*, VI, 1. 2). Hence right conscience can be predicated, although per accidens, even of him who labors under invincibly erroneous conscience, as will be said below. Cf. Beaudouin, q. 1, § 1.

16. Division. Erroneous conscience is either invincibly or vincibly erroneous.
17. Invincibly erroneous conscience is that whose error morally cannot be overcome or laid aside; because, a) either the thought or doubt of error in no way, not even confusedly, comes into the mind of the one acting, while he places

the action or its cause; or because, b) although doubt of error has come into the mind, nevertheless, with moral diligence applied for attaining the truth, the error cannot be driven away.

18. Vincibly erroneous conscience is called that whose error man does not lay aside through neglect. Therefore he operates with vincibly erroneous conscience who a) either already notices the error in some way, or b) at least

doubts about the error, and at the same time notices the obligation of overcoming it, and nevertheless does not inquire into the truth.

But diligence in inquiring into the truth is not required to be the greatest; ordinary and common diligence suffices, such as prudent men of the same condition are accustomed to apply in like circumstances.

Note. Those things which later in the various treatises, on Laws, on Sins, on Censures, etc., will come to be said concerning ignorance will explain the present matter more perfectly. See n. 22.

17. Principles. I. We are always bound to obey a true conscience, whether prescribing or prohibiting. This is clear from the words of the Apostle (Rom. 14:23): But all that is not from faith (that is, from the dictate of conscience) is sin. And from Innocent III (c. *Litteras, de restit. spol.*): "Whatever is done against conscience builds toward gehenna." The reason is that true conscience is the right application of the law, and a manifestation of the divine will, to which it is always unlawful to resist.

St. Bonaventure very beautifully expresses this office of conscience, saying: "Conscience is like the herald of God and His messenger; and what it says, it does not command from itself, but commands as though from God, as a herald when he publishes the edict of the king" (L. 2 *Sentent.*, dist. 39, a. 1, q. 3).

18. II. We can obey a true conscience permitting or counseling, but we are not bound. For 1. it belongs to a permitting conscience truly and absolutely to dictate that some action is neither prescribed nor prohibited, therefore; 2. but it belongs to a counseling conscience to declare that something is better and of counsel. But this is the nature of counsel, that it indeed brings in the merit of reward in the one carrying it out, but no guilt of fault and penalty in the one omitting it. Hence that saying: "He who passes over counsel does not sin, provided contempt is absent" (St. Thomas, *de Verit.*, q. 17, a. 3 and 4).

19. Nevertheless it must be noted that what the law in general only counsels or permits can in the particular case be prescribed or prohibited by conscience, namely when there are peculiar circumstances which, in a special case and for a determined person, clearly manifest the obliging will of God; as will be clear from the things to be said concerning vocation to the clerical or religious state (cf. n. 1916, q. 3 and n. 2141).

20. The principal means by which the treasure of a true and right conscience is acquired are these: 1. knowledge of the law of the Lord, in which each one can progress by continual study, by reading good books, by consulting the doctors of the Church, and especially by questioning and humbly listening to the Church herself, who is the supreme mistress of consciences. 2. Mortification of vices. This mortification is absolutely necessary, because the practical judgment of reason, on account of the evil inclination of the will, often turns away from the truth. 3. Prayer, or assiduous conversation with the Divine Teacher, who speaks within without the noise of words, and raises up to Himself a docile mind in a point of time so that it grasps more reasons of eternal truth than if it had studied in the schools for ten years (*Imit. Chr.*, l. 3, c. 43).

21. III. It is right to follow an invincibly erroneous conscience permitting; one must follow it when it prescribes or prohibits. The reason for both is that "a human act is judged virtuous or vicious according to the apprehended good, toward which the will is borne of itself, and not according to the material object of the act" (St. Thomas, quodl. 3, a. 27; St. Alphonsus, I, 5).

The first is also clear: 1. From the words of the Lord (John 15:22): If I had not come and spoken to them, they would not have sin. 2. From the saying of St. Augustine (*de Lib. arb.*, l. 3, c. 19, n. 53): "That which you unwillingly do not know is not imputed to you as fault." 3. From the second proposition condemned by Alexander VIII: "Although there be invincible ignorance of the natural law, this does not excuse the one acting from formal sin." So Baius and Jansenius (cf. Viva, on this proposition).

The second is proved: 1. From the doctrine of the Apostle (Rom. 14:22), saying that one who eats meats which he judges it unlawful to eat, as having been sacrificed to idols, truly sins, because he acts against faith, that is, conscience.

2. From reason: the will is borne toward the object not according as it is in itself, but according as it is proposed by reason. Hence St. Thomas says (1.2, q. 19, a. 5): "When erring reason proposes something as a precept of God, then it

is the same thing to condemn the dictate of reason and the precept of God.”¹ Hence he who acts against an invincibly erroneous conscience (if it obliges) commits sin of the same species as if he acted against a true conscience.

It is useful to note that one acting with invincibly erroneous conscience not only does not sin, but also more probably acquires merit for himself. “The reason is that, in order to call some act good, at least inadequately, it suffices that it be directed by the dictate of reason and prudence. Therefore, since the one acting acts prudently, without doubt he ought to merit on account of the good end by which he is led in acting, namely the end of the glory of God or of charity toward neighbor, etc.; just as, on the contrary, he would demerit who does a good work, but apprehended as evil, on account of the evil end by which he carries out that work” (I, 6). So the doctors very commonly with St. Bernard, “who teaches that a subject obeying a prelate from a right intention acts meritoriously, although materially he errs against the law” (*de Praec. et disp.*, c. 14, n. 21). Cf. I, 7 and 173, 174.

22. IV. No one can follow a vincibly erroneous conscience permitting, nor condemn one prescribing or prohibiting; but each one is bound to lay it aside. For 1. By operating according to a permitting conscience of this kind, a man sins, because he does what in reality is evil in itself; nor does ignorance excuse him from fault, since, as vincible, it makes his act voluntary in its cause (cf. n. 288). Thus a judge who already notices that he does not sufficiently know a case debated in court cannot cast his vote for either side; but he is bound to acquire for himself a more perfect knowledge of the matter, so that he may thus be able to render a just sentence; otherwise he would rashly commit himself to the danger of erring, and accordingly would stain himself with sin. 2. By operating against an obliging conscience of this kind, he likewise sins, because he chooses what he judges to be evil. Thus, he who erroneously judges that he must lie or steal in order to help his neighbor, and at the same time notices the obligation of further inquiring into the truth, cannot follow such a conscience, nor act against it (I, 4).

Yet in order that one sin by acting against erroneous conscience, his action must be free. Hence the ignorant man does not sin, even if he believes himself to sin, when, being unable, he omits to hear Mass on a feast day; when he suffers involuntary distractions in prayer, or nocturnal pollutions in sleep.

Note. That the confessor may more easily judge whether the conscience of a penitent was vincibly or invincibly erroneous, let him ask him: a) whether he truly doubted concerning the lawfulness of the act, b) whether he attended to the obligation of searching into the matter further? If he answers affirmatively, we have one laboring under a vincibly erroneous conscience. Nevertheless the responses of a scrupulous person must be weighed according to the things soon to be said. Cf. n. 319, 337.

Scholium

On Lax, Scrupulous, and Perplexed Conscience

23. To vincibly erroneous conscience can be reduced: 1. lax conscience, which loosens obligations too much; 2. scrupulous conscience, which increases them too much; 3. perplexed conscience, which apprehends sin in both terms of a contradiction.

We shall treat of each only briefly here, because practical rules will be set forth at length below in the treatise on Penance.

1. On Lax Conscience

24. Notion. A lax conscience is that which, from light and contemptible reasons, judges that what in reality is evil is not evil, or thinks that a grave evil is light, although either can easily be detected (H. Ap., tr. ult. 31). How great a danger threatens from this sort of conscience the Savior Himself declares, crying out: Broad is the way that leads to perdition (Matt. 7:13).

Lax conscience can be distinguished in three ways:

1. Simply lax conscience, which tends to extending liberty beyond what is fair, for example if it rests upon a slightly probable or improbable opinion.
2. Cauterized conscience, when, from a long-standing habit of sinning, it counts grave or even most grave sins as nothing, calling evil good and good evil (Isa. 5:20), and drinking iniquity as though water (Job 15:16).

¹But what if someone knows an action to be evil in general, but does not attend to the species of malice? See n. 337. Finally, what if he doubts concerning the gravity of the act? Cf. below, n. 36.

3. Pharisaical conscience, when it makes great things small and conversely small things great; of which sort were the Pharisees straining out a gnat but swallowing a camel (Matt. 23:24).

4. The principles to be adapted to a lax conscience are these:

I. He gravely sins who, knowingly obeying a lax conscience, transgresses some law in a grave matter.² The reason is that he could easily overcome ignorance of this kind, as being voluntary, and therefore cannot, under the pretext of ignorance, be excused from lethal sin.

II. Indeed, he can gravely sin in a light matter, if his temerity drives him to acting after any dictate whatever has been passed over and contemned.

III. He who labors under a lax conscience ought, far more strictly than others, to apply effort to laying it aside, if a doubt about the honesty of an action arises.

26. The causes of lax conscience are: 1. a soft life, which enervates; 2. neglect of prayer, which wholly casts us down; 3. excessive solicitude for temporal things, which makes us earthly; 4. the custom of sinning, which removes the horror of sin; 5. familiarity with vicious men, to whom we become accustomed; 6. luxury, which prevents the Christian from inclining and tending toward spiritual things.

The effects are: 1. blind tranquillity of soul after sin; 2. insensibility to pious warnings; 3. mockery of pious exercises; 4. an impenitent heart treasuring up wrath for itself on the day of wrath (Rom. 2:5).

The remedies of such a conscience are: 1. spiritual retreat for several days; 2. frequent and humble prayer with meditation on the last things; 3. daily examination of conscience; 4. frequent reading of pious books; 5. diligent confession; 6. flight from the wicked and conversation with the good (Haine, *Elem. Theol. mor.*, n. 44).

2. On Scrupulous Conscience

27. Notion. A scrupulous conscience, or one agitated by scruples, is that which, from a slight motive, doubts concerning the honesty of some action, and therefore often fears that there is sin where there is none (H. Ap., I, 8).

Scruple is said from *scrupus*, which is a rough little stone entering the shoe of one walking, whence the foot is injured and the step impeded. Therefore a scruple is a vain apprehension, or an empty specter of sin, by which the eyes of the mind are struck, as infants are terrified by apparitions. But it belongs to the malignant spirit to inject a greater anxiety of sinning than is proper, so that the soul, rushing into the abyss of despair, may no longer truly fear any sin.

Three things concur for a scruple: 1. a futile reason, whose solution does not appear; 2. a vain fear of sinning arising thence; 3. disturbance of soul (Billuart, *de act. hum.*, Diss. 5, a. 5).

You will infer: 1. Scrupulous conscience, as such, is not conscience, but only a shadow and likeness of conscience; for it is not the dictate of reason, but of imagination. Yet if someone were to judge firmly that sin is present where it is not, he would have a conscience formed by scruples and therefore erroneous, but properly so called. 2. It differs entirely from a tender and timorous conscience, which indeed solicitously, but wisely, according to the rules of Christian prudence, avoids every sin, even the slightest.

28. Since the present matter is to be treated elsewhere (n. 1835 seqq.) in order to practice, it suffices here to note two things:

I. To act against scruples is always licit, and often obligatory. 1. It is licit, because a scruple is not a dictate of reason, but an empty fear, as lacking a prudent and reasonable foundation. Therefore that fear does not prevent the one acting from forming for himself a practically certain conscience from extrinsic principles, especially from the authority of the confessor. Hence, to act against a scruple is not to act against conscience.

2. It is obligatory, because excessive anxiety greatly harms spiritual progress, and brings grave detriment to body and soul at once (I, 19).

II. The principal and almost sole remedy against scruples is to acquiesce in the judgment of a superior or confessor. - Thus very commonly the Doctors, and the reason is clear. For since the scrupulous, while they are agitated by scru-

²Note: knowingly; for he will be immune from sin who does not know that he is of lax conscience. Indeed, one who ordinarily is conscious of his state, yet actually, not even confusedly, notices the obligation of investigating more accurately, can sometimes be free from grave sin, namely by reason of involuntary precipitancy in acting. See what will be said (n. 319) concerning the virtual voluntary (Lehmkuhl, I, 138).

ples, cannot form for themselves a true dictate of conscience, nothing else remains except that they hand themselves over to be ruled by the counsel of others, and use extrinsic reasons rather than intrinsic ones (I, 12).

3. On Perplexed Conscience

29. Notion. A perplexed conscience is that by which someone, placed between two precepts, believes that he sins whichever part he chooses. He labors under this conscience who, for example, assisting a sick person, thinks that he will sin equally, whether, on a feast day, he omits Mass, or whether he departs from the infirm person.

Rules to be observed by the perplexed (I, 10; H. Ap., I, 7):

I. If the perplexed person can defer the action without grave harm, he is held to defer it until he has consulted the wise (for example a confessor); because each one must avoid that by which he thinks God is offended.

II. If (as usually happens) he cannot defer the action, he is held to choose that which seems to him the lesser evil, avoiding rather the transgression of natural law than of human or positive divine law; for the law of an inferior order must yield to the law of a superior order.

III. If he cannot discern the lesser evil, whichever part he chooses, he does not sin; because there is lacking in him the liberty necessary for formal sin, and because he himself is in invincible ignorance (cf. n. 216).

Chapter II

On Certain and Doubtful Conscience

St. Thomas, *de Verit.*, q. XIV; 2.2, q. 1, a. 4; q. 2, a. 1; q. 70, a. 2; St. Alphonsus, I, 20-39; ed. G., I, p. 11 ff.; Mazzotta, tr. I, disp. 1, q. 3, c. 1-5; Bardi, *Discept. de consc.*, discept. 1, c. 9; disc. V and VI; Reuter, P. I, tr. 2, c. 2, n. 75; Panzuti, *Theol. mor.*, I, tr. 1, 3 and 4; *Vind. Alph.* (ed. 2), n. 125; Lehmkuhl, I, n. 119.

We shall speak: 1. of the necessity of certain conscience for acting rightly; 2. of the manner in which doubtful conscience is laid aside.

Article I

On the Necessity of Certain Conscience

For the sake of clarity it is useful to premise the doctrine of St. Thomas concerning the threefold state in which, with respect to a proposed truth, our mind can be placed: namely concerning the state of certitude, doubt, and opinion.

30. "Our intellect," says the Angelic Doctor, "with respect to the parts of a contradiction, is disposed in diverse ways. For sometimes it is not inclined more to one than to the other, either because of a defect of things moving it, as in those problems concerning which we do not have reasons, or because of the apparent equality of those things which move toward either part: and this is the disposition of one doubting, who fluctuates between the two parts of a contradiction. But sometimes the intellect is inclined more to one than to the other, yet that which inclines it does not sufficiently move the intellect so as to determine it totally to one of the parts; whence indeed it accepts one part, yet always doubts concerning the opposite: and this is the disposition of one opining, who accepts one part of a contradiction with fear of the other. But sometimes the intellect is determined to this, that it totally adhere to one part: ... and this is the disposition of one understanding principles... of one knowing... and of one believing" (*de Verit.*, q. 14, a. 1).

Elsewhere (3 D. 23, q. 2, a. 2, sol. 1) he has these things: "When the reason which moves toward one part neither suffices for terminating the intellect, because it does not resolve conclusions into principles known of themselves, nor suffices for terminating the will, so that it seems good to it to adhere to that part, then a man opines that to which he adheres and the intellect is not terminated to one thing, because there always remains a movement toward the contrary: for he accepts one part with fear of the other; and therefore one opining does not assent. But when a man does not have reason toward one part more than toward the other, either because he has reason toward neither, which belongs to one not knowing, or because he has reason toward each, but equal reason, which belongs to one doubting: then he in no way assents, since his judgment is in no way determined, but he is disposed equally toward diverse things." In what sense one opining does not assent, he explains there immediately afterward: "One opining has thought without perfect assent, but he has something of assent, insofar as he adheres to one more than to another." Likewise in the *Summa Theologiae* (2.2, q. 2, a. 1): "Some acts pertaining to the intellect have firm assent without such thought; ... but some acts of the intellect indeed have unformed thought without firm assent, whether they decline to neither part, as happens to one doubting, or decline more to one

part, but are held by some slight sign, as happens to one suspecting, or adhere to one part, yet with fear of the other, which happens to one opining.”

These things having been noted beforehand, without difficulty the diverse notions concerning the state of certitude, doubt, and opinion are established.

31. On the state of certitude.

Notion. CERTITUDE can be defined: the firm adherence of the mind to some proposition, without fear of erring; or also with St. Thomas: “The determination of the intellect to one thing” (3 D. 23, q. 2, a. 2, sol. 3); and in other words: “The firmness of adherence of the cognitive power to its knowable object” (ibid., D. 26, q. 2, a. 47).

Division. 1. By reason of acquisition, certitude is divided into direct or indirect certitude.

Direct certitude is that which arises from proper and intrinsic principles affecting the thing itself. Thus it is directly and perfectly certain that children owe love to parents; for the certitude of this thing is sought from the very relation of cause which parents have toward children.

Indirect or reflex certitude is that which is obtained from principles extrinsic to the thing. Thus, for example, a son invincibly doubting whether a thing commanded by his father is lawful in itself or not, can arrive at a certain dictate with respect to lawfulness if he has recourse (or reflects) to the general principle: In doubt, one must stand for the superior. See n. 38, where there are more things.

2. By reason of firmness of assent, it is divided into absolute and moral certitude.³

Absolute certitude is the assent of the mind on account of an infallible motive. On account of this sort of motive, such firmness is present in the mind that it excludes not only every fear of erring, but even the power of deliberately fearing. The following propositions, and propositions similar to them, introduce this certitude: the whole is greater than its part; bodies are heavy; the Roman Empire once existed.

Moral certitude (such as is understood here) is the assent of the mind on account of authority or grave reasons; so that there is no founded reason for doubting or fearing concerning the truth of the object. Such certitude arises, for example, from the testimony of two men who are worthy of faith. It does not indeed remove the possibility of doubting, but it actually excludes prudent fear of error.

Broad moral certitude. From this perfect moral certitude, or moral certitude properly and strictly so called, there plainly differs imperfect moral certitude, or certitude improperly and broadly taken, by which one indeed adheres to one part, but with a certain prudent fear of error. Therefore in this state there is indeed an assent of the mind, and thus it differs from the state of strict doubt (n. 32); but that assent is not firm, but fearful; and thus it differs essentially from moral certitude properly so called, and agrees with the state of one opining (n. 33). In other words: broad moral certitude excludes prudent and strictly so-called doubt, but admits prudent fear or hesitation.

This notion of imperfect moral certitude, or broadly so called - which is of the greatest moment in this matter - plainly agrees with the doctrine of St. Thomas and of the other principal doctors.

By the Angelic Doctor this sort of certitude is called “probable certitude, which,” he says, “attains the truth in the greater number of cases, although in the fewer number it falls short of the truth”⁴ (2.2, q. 70, a. 2); likewise “certitude of prudence” (2.2, q. 47, a. 9), or “certitude of opinion” (3 D. 23, q. 2, a. 2, sol. 3, ad 1). Blessed Albert the Great agrees (*In Topic.*, l. 1, tr. I, c. 2). St. Antoninus agrees, who calls the same “certitude of probable conjecture,” and says that it arises “from gross and figurative probable conjectures disposed more toward one part than toward another” (*Summa Theol.*, P. I, tit. 3, c. 10, § 10). Likewise Gerson, who has these things: “In morals, Aristotle says that certitude is to be taken grossly and figuratively; this certitude does not remove every probability or opinion of the other part, although it inclines more to this or to that, which suffices” (*de Contr.*, P. 2, prop. 13).

Lugo also rightly says (*de Fide*, I, n. 316): “We can distinguish two grades of moral certitude. The first is of certitude which we have described, namely that which excludes every prudent fear of erring, and this is proper moral certitude. The second is of less proper certitude, which does not exclude prudent fear, but only prudent doubt concerning that object, or a prudent judgment concerning the contrary object.”

³There is certitude of the supernatural order and certitude of the natural order. The latter is divided by philosophers into metaphysical, physical, and moral, according as the assent of the mind is founded on the essence of things, or on the constancy of the laws of nature, or on the laws tempering the morals of men. Everyone sees that moral certitude is used among moralists in a broader signification than the aforesaid (cf. Voit, *de Cons.*, n. 75).

⁴“Note,” writes Mayr, S.J. (*Theol. schol.*, tr. IV, n. 373), “St. Thomas only requires that it be true in the greater number of cases, although not in the fewer; he does not say in the greatest number or in the very fewest.”

Finally St. Alphonsus teaches: “For forming the moral certitude of some opinion, it is not required that the authors holding the opposite still lack every reason, even a light one; but it suffices if that opinion, with all things weighed, appears so true that scarcely any appearance of truth remains for the contrary, or that the contrary does not seem sufficiently probable” (Diss. 1755, n. 52). In the Moral Work (I, 81; ed. G., I, p. 60) it is possible to read: “A most probable opinion, which is also called morally certain, speaking broadly however, does not exclude every prudent fear lest it be false; unlike an opinion or opinion strictly certain, which excludes every prudent fear” (I, 81; ed. G., I, p. 60). St. Alphonsus also understands this imperfect moral certitude, or broadly so called, whenever he says that an opinion certainly or notably more probable is “morally or quasi-morally certain,” or “sufficiently certain.” Therefore several authors are mistaken who teach that broad certitude also excludes prudent and reasonable fear of error, and consequently begets firm assent.

32. On the state of doubt.

Notion. Doubt in general, insofar as it is opposed to strict certitude, is the suspension of judgment or of firm assent.

Division. Doubt is distinguished in many ways:

1. By reason of assent or adherence, it is divided into strict doubt and broad doubt. Strict doubt is the suspension of all assent, or the fluctuation of the mind, on account of equal motives for either part of a contradiction. This alone is true, genuine, properly so-called, and prudently formed doubt, according to the doctrine of St. Thomas (cf. above n. 31) and of all philosophers.⁵ Broad and improperly so-called doubt consists in a certain prudent fear of the intellect imperfectly assenting to one part of a contradiction. This fear, which by St. Thomas is also called “doubting,” namely in a broad sense, or “some doubt” (quodl. VIII, a. 13), arises either from this, that the motive existing for only one part is not plainly firm but only probable, or from this, that the motives for one part are certainly or notably graver, although for the opposite part there are also motives grave in themselves. Therefore this broad doubt accompanies the state of broad and imperfect certitude (n. 31), or the state of one opining (n. 33).

Note. Suspicion is reduced to strict doubt; it stands midway between doubt and opinion, insofar as the mind, led by a slight sign, inclines toward one part only, but by no means assents to it. So St. Thomas (above n. 31), with whom St. Alphonsus wholly agrees (H. Ap., I, 77).

2. By reason of the motive or foundation on which it rests, doubt is negative or positive. It is negative when no probable reasons occur on either side, but either none or only light ones. It is positive when for each side (doubt positive on both sides), or at least for one side (doubt positive on one side), there is present a grave motive sufficient for forming a probable conscience, although with fear concerning the opposite.⁶
3. By reason of the object, there is doubt of fact and doubt of law. Doubt of fact is concerned with the essence or existence of a thing. For it asks what is: whether, for example, such a pact has been added to a contract or not; whether such a decree has been duly promulgated; whether it has been abrogated; whether the present thing is the object or matter of the law or not: for example, whether this food placed before me is meat or not; whether I have satisfied the law, vow, penance, obligation of contract, etc. Doubt of law is concerned immediately and of itself with the law or the obligation of the law, and consequently with the honesty of the action; for it asks (although only theoretically and in general): what is to be done; whether it is lawful to confer a sacrament with such matter, to enter into a contract with such a pact, etc. (I, 41, 53; H. Ap., XVI, 142; XVIII, 35; XIX, 79; cf. VII, 67, where there are examples).

It must be noted here that doubt of law arises from some doubt of fact; for right arises either from the essence of the thing (for example, from the very nature of man), or from some positive act, for example, from a contract, from the decree of a legislator, etc.; and similarly it is removed by a fact, for example, by payment of a debt, by dispensation from a law, etc. But doubts of fact are more commonly concerned with matter falling under a law, since in these it is generally asked: whether a man is placed in such circumstances as demand the application of the law.

4. By reason of the mode in which the object is considered, doubt is speculative or practical. It is speculative when one doubts concerning the truth of a thing or proposition, concerning the objective honesty of an action: for example, whether that war is just or not; whether painting is servile work; whether Baptism conferred with distilled water is valid, and like things. It is practical when one doubts concerning the subjective honesty of placing an action, that is, when someone doubts whether in practice, and with all the circumstances in which he is here and now placed

⁵Genicot (I, 51), and others, define strict doubt otherwise. In this, however, they depart from the common use of speaking, and from the notions handed down by St. Thomas (*de Verit.*, q. 14, a. 1; 2.2, q. 2, a. 1; 3 D. 23, q. 2, a. 2, sol. 1). St. Alphonsus plainly agrees with St. Thomas: “When the opinion which stands for liberty is of equal moment, then strict doubt is present” (I, 62; ed. G., I, p. 32).

⁶I, 20; cf. *Instruz.* XVI, 30, examples. Negative doubt is mere ignorance or not knowing, doubt precisely physical (for example, of the scrupulous). Positive doubt is moral, reasonable, and properly so-called doubt. Salmant., tr. 24, disp. 8, n. 176.

having been weighed, he can or ought to act; for example, whether it is lawful for me to serve as a soldier in such a doubtfully just war; whether on this feast day to paint; whether to baptize this boy with distilled water (I, 21, 25; *Istr.*, I, 13; *Conf. dir.*, I, 9).

As can be seen, speculative doubt is a doubt of science, which proximately and of itself is concerned with the true, although consequently and remotely, when a moral matter is in question, it also regards the lawful. Practical doubt is a doubt of conscience, by which it directly and immediately regards the lawful. But it arises from speculative doubt, whether of law or of fact, and always supposes it: for no one, unless he is scrupulous, can doubt whether it is lawful for him, for example, to paint on a feast day, unless he has already doubted whether painting is servile work prohibited by God. Therefore speculative doubt is about the premises, practical doubt about the conclusion (Diss. 1757, n. 54).

33. On the state of opinion.

Notion. Opinion is a weak assent by which the intellect is borne toward one part of a contradiction, esteemed as true, with fear concerning the opposite.

It is said: 1. It is assent, and thus it differs from strict doubt and suspicion.

2. Weak, and thus it differs from strict certitude.

3. Esteemed as true; for “one opining,” says St. Thomas (in VI *Eth.*, lect. 8), “says that what he opines is true,” and indeed he says this with fear. Accordingly, opinion also involves positive knowledge, although imperfect.

4. With fear, that is, prudent and reasonable fear; for imprudent and irrational fear is not always absent even from the certitude of faith.

And so the state of one opining, into which someone comes after mature consideration, includes broad doubt (n. 32), and coincides with broad and imperfect moral certitude (n. 31).

34. Note. The word opinion, as is clear, is taken here for the subjective state of the mind, but not for some opinion or objective proposition, in which sense we speak of an opinion, that is, a true, false, probable, lax, safe, etc., opinion or proposition.

These things having been noted beforehand, let us approach the argument of the present article.

35. Definitions. Certain conscience is that by which one firmly and without fear of erring judges that something is lawful or unlawful for him.

It differs from true conscience as certitude differs from truth. Truth regards the object, which is apprehended as it is in itself; therefore it excludes error. Certitude regards the subject judging that something is true without fear of falsity; therefore it excludes fear of error, which nevertheless can be present in the subject per accidens invincibly. Hence it is clear that conscience can be certain without being true. Yet of itself certain conscience is always right conscience; whence the question is always made only concerning certain conscience (Beaudouin, q. 2, a. 1).

Doubtful conscience is that which suspends assent for either part of the doubt, and remains uncertain and hesitating (I, 20).

It is clear that conscience of this kind, on account of the defect of judgment, is not conscience in the true sense of the name, but is called by this name improperly, and only from the usage of the schools.

36. Principles. I. For acting licitly there is required moral certitude concerning the honesty of the action. In other words, certain conscience alone is the rule of morals, and it is never lawful to act with a practically doubtful conscience (I, 55; H. Ap., I, 31). It is proved, 1. From the words of St. Paul (Rom. 14:23): Everything that is not from faith is sin. “It is said from faith, namely from the certain dictate of conscience, so that a man has persuaded himself in his conscience that by acting he acts rightly, as St. Chrysostom, St. Ambrose, and others with St. Thomas explain that phrase FROM FAITH.” 2. From reason: he who acts with a conscience not certain voluntarily exposes himself to the danger of sinning, and by this very fact sins. And indeed, he who, uncertain about the honesty of an action, nevertheless acts, implicitly and interpretatively says: I wish to do this, whether it is lawful or unlawful: which is a virtual contempt of the divine law, and consequently sin (cf. St. Thomas, *de Verit.*, q. 17, a. 3).

But if it is asked what sin one thus doubting and acting commits, St. Alphonsus answers (I, 22): “He sins, and indeed with a sin of the same species and gravity concerning which he doubts; because he who exposes himself to the danger of sinning already sins, according to that: He who loves danger shall perish in it (Ecclus. 3:27). Wherefore if he doubts whether that is mortal, he sins mortally.” Cf. however n. 337, q. 2, where there are other useful things.

37. II. For acting licitly, ordinarily strict moral certitude is not required, but broad moral certitude suffices. This is the very common opinion among the authors. Cf. Dissertation *de Usu moder.*, 1757, n. 31.

We say ordinarily, for sometimes prudence does not permit even the slightest danger of error to be undergone: for example, when the life of a man is in question, or the validity of Baptism to be conferred, etc.; in these cases certitude entirely strict is required, as we shall say more accurately in its place (cf. n. 81 ff.).

The reason is that, since God does not command impossibilities, those dictates in the matter of morals must suffice which we can practically form. But although we have strict certitude regarding first principles and their proximate conclusions, nevertheless ordinarily only dictates of broad moral certitude are at hand for us relative to remote conclusions.⁷ Whence St. Thomas (2.2, q. 47, a. 9, ad 2): Certitude is not to be sought in the same way in all things, but in each matter according to its proper mode. But because the matter of prudence is singular contingents... the certitude of prudence cannot be so great that all solicitude is removed. And in another place: Moral matter is such that perfect certitude is not fitting (1.2, q. 91, a. 3, ad 3). To the matter also St. Antoninus (*Summa*, P. I, tit. 3, c. 10): It belongs to the disciplined man to seek certitude in each thing according to the exigency of the matter. Recall what we said above (n. 31). Cf. Suarez, *de Lege*, l. 8, c. 3, n. 19; *de Relig.*, tr. 6, l. 4, c. 5, n. 5; Valensise (*super syst. Theol. mor. disquisitio*), where he treats the mind of St. Thomas concerning the sufficiency of probable certitude in moral judgments.

Note. Arguments of this kind, which establish the sufficiency of broad moral certitude, can be called concomitant principles. For they accompany, at least implicitly and in exercise, the direct arguments from which firm security cannot be had, so that they may render it plainly firm and perfect.

Nor is there an obstacle in the fact that in broad moral certitude there is still a certain prudent and founded fear of error (n. 31), for this remains only in the speculative order; but practically the fear of sinning is excluded by those same concomitant principles, which for this reason are also called by others indirect and reflex principles. Cf. *Vind. Alph.*, Apologetic Dissertation, n. 125; Beaudouin, p. 44.

38. III. For acting licitly, reflex certitude sometimes suffices.

It is said: sometimes, namely if, while an invincible speculative doubt remains, direct certitude cannot be had. For before all things direct certitude is to be sought; that is, before all things diligent inquiry into the truth is required, because, as the doctors say: "The law of acting imports the law of knowing." But if, after sufficient inquiry, direct certitude cannot be obtained, indirect or reflex certitude suffices (I, 25).

It is proved, 1. From authority. "It is certain and commonly explored among all the doctors," says St. Alphonsus (I, 64), "that the moral certitude of some opinion, if it is not proved from some certain direct principle, is nevertheless proved from another reflex principle, likewise certain, as is proved from can. 4: *Quid culpatur*, caus. 23, q. 1, where St. Augustine writes: A just man, if perhaps he serves as a soldier even under a sacrilegious king, can rightly wage war when that king commands, if, preserving the order of civil peace, either he is certain that what is commanded him is not against the precept of God, or he is not certain whether it is." Therefore, although a subject is doubtful concerning the justice of a war, nevertheless he can licitly serve as a soldier at the command of his prince - and by what reason? relying on the reflex principle that the prince has a certain right, so that always, and so long as the injustice is not established, he be obeyed.⁸

2. From reason. Because he who acts thus prudently judges that in these circumstances he acts lawfully and honestly: since the judgment concerning the honesty of his act rests no longer on weak reasons of probability, but on a most firm supervening, that is, reflex principle. Cf. n. 44 and 57 ff.
3. As Beaudouin, O.P., excellently explains (*de Consc.*, p. 42 ff.): When doubt stands in the principles, the intellect is determined by the will, which chooses to assent determinately to one part, on account of a motive which is sufficient for moving the will but not the intellect, as being that it seems good and fitting to assent to this part. Therefore from the end of virtue the will is rectified; by the reflex principle reason is certified.

As regards obtaining certitude, surely the reflex principle cannot do more than the direct principle, if the discussion is about the truth of the opinion; but it can, if the discussion is about its use. For the truth of an opinion must always be distinguished from its use, that is, the true from the lawful. For it is one thing to ask whether this opinion is objectively true; it is another to ask whether it is lawful to use this opinion in practice, as is clear in the cited example of the soldier (I, 21).

⁷In other words, prudence, from which the dictate of conscience proceeds, demands that its dictate not be defective, but morally safe and firm. But prudence is concerned with fallible, individual, contingent operations, concerning which ordinarily only broad moral certitude can be had (cf. Beaudouin, *de Consc.*, p. 39, where there are excellent words of Cajetan).

⁸Cf. Diss. 1757, n. 54. Cardinal Gousset affirms (*Theol. mor.*, I, n. 78, note) that he counted over 400 authors who demonstrate that certain conscience can be formed from reflex principles.

Nor from these things does the absurdity follow, namely that concerning the same object there can be doubt and certitude at the same time; for in this case the doubt and certitude are not concerning the same object. The doubt regards the truth of the opinion in itself, or objective morality; the certitude regards subjective morality, that is, the honesty of the action in him who uses such an opinion. Thus, for example, one doubting whether a contract is usurious indeed doubts concerning the truth of the opinion affirming it; but with this doubt there well consists certitude that the contract can be honestly entered into, which certitude is drawn from this reflex principle: "A doubtful law does not oblige" (cf. n. 46).

"Hence it appears that reflex principles do not solve the particular question, but leave it uncertain; only the practice is certain, because reflex principles fix a certain rule for directing practice in that doubt." Therefore with our Holy Doctor we conclude: "For acting licitly we must have moral certitude concerning the honesty of the action, either direct, if we use an opinion morally certain, or reflex, if the opinion is only probable" (I, 23, 64; cf. Diss. 1757, n. 34, 53, 54).

40. From the things said the following rules flow spontaneously for practice:

Rule 1. He who is practically doubtful is bound, as long as he remains in such a state, to follow the safer part according to the axiom: In doubt the safer thing is to be chosen (I, 77).

The safer part is said to be that which stands for the law; the less safe part, that which stands for liberty. Therefore he who embraces the safer part, namely by omitting a work doubtfully prohibited, or by doing one doubtfully commanded, certainly fulfills the law, and does not sin even materially. But he is bound to this by the very fact that he has and preserves a practically doubtful conscience, as is clear from what was said (principle I, n. 36).

Rule 2. He who in practical doubt does not wish to follow the safer part (or cannot, for example because he must intimate the law of God not to himself, but to others), should inquire into the truth with moral diligence, and then act according to the truth found. Prudence dictates this, and justice demands it, that to each his own be rendered. For in the present case law and liberty in some way litigate with each other. Whence reason, which in man is like a judge in a city, must, if possible, hear and weigh the arguments of each litigant, and then adjudicate the cause to him to whom right in reality favors (1.2, q. 104, a. 1).

Moreover this inquiry is to be made with moral diligence, that is, with diligence which truly corresponds to the gravity of the question, the weight of the reasons, the condition of the person, and the other circumstances of things. Thus, for example, for an uneducated man, who is incapable of forming conscience for himself, it will be enough to consult the pastor or confessor, or another pious and learned man; and then to act according to the counsel received. But for the theologian and confessor, to whom by office it belongs to impose just burdens on others, greater diligence, as is clear, must be applied (I, 24; V, 4; H. Ap., III, 33).

Rule 3. If the doubt, all things weighed, is noticed to be empty, it must be held as nothing. The reason is that morals are to be composed from a prudent judgment; but a doubt which, all things weighed, remains merely negative, and is nothing other than an empty fear or suspicion, is by no means opposed to a prudent judgment. Therefore it can be laid aside without another reflection; and thus either the liberty or the obligation which existed before the doubt perseveres, and in practice is held for truth (I, 11, 24, 37; VI, 908).

Rule 4. If the doubt is founded and, the matter diligently weighed, is recognized to be strict and invincible, a practically certain dictate must be formed according to reflex principles, as was said above (n. 38).

Article II

On the Manner of Laying Aside Doubtful Conscience by Reflex Principles

41. Doubtful conscience, according to the diverse condition of things, is laid aside diversely. In the present matter a twofold condition must be considered: either the matter concerns only the honesty of the action, as if I doubt whether fasting is commanded today, in which case there intervenes only the danger of violating the law; or the matter concerns some end necessarily to be obtained, for example, the validity of a sacrament, as happens if someone doubts whether he can use uncertain matter in conferring Baptism, in which case a twofold danger is incurred: namely the danger of transgressing the law and of frustrating the sacrament.

42. Rules to be observed. I. Whenever the matter concerns an end absolutely to be attained, or an evil not depending on conscience, but certainly to be avoided, in any doubt whatever the safer part is to be followed. The reason is that the necessity of the end does not allow it to be committed to the danger of frustration, since the attainment of the end does not depend on the persuasion of conscience, but on the means really applied.

- II. Whenever, while an invincible speculative doubt stands, the matter concerns only the honesty of the action, a practically certain conscience can be formed from the following principles, which at one time urge the obligation of law, at another favor the liberty of man, according as possession favors either the law or liberty. The reason will be clear from the explanation itself of the principles.

And this is the sum of the Alphonsian system, which will be set forth more fully in the following chapter. But that we may proceed in order, first the reflex principles themselves, by which conscience is formed, must be set forth according to their genuine sense.

43. Distinction of reflex principles. Among reflex principles, some are more universal in extension or use: these immediately serve in every speculative doubt for forming practical judgment. Others are more special and, as it were, subsidiary: recourse is had to these in doubts of fact, in order to discern what is favored by that universal principle which is called the principle of possession.

I. General Reflex Principles on Which Practical Judgment Immediately Rests in Doubt

44. I. THE CONDITION OF THE ONE POSSESSING IS BETTER. This principle is very well known in both canon and civil law.⁹ In canon law, indeed, there is the axiom: In equal fault or cause, the condition of the possessor is stronger; and in civil law: In an equal cause, the possessor ought to be held stronger.

It is of great importance that the principle of possession be rightly understood.

1. All know that it takes its origin from civil law, and there, in doubts, obtains juridical value. It draws its force from presumption. Presumption is defined: A persuasion concerning some thing as true and certain until the contrary is proved (Polman, 2.2, n. 681). Or, as others will it: An anticipated proof of a doubtful thing, drawn from valid arguments and indications. Therefore presumption takes something for true before direct proofs. From this it is concluded that, whenever something is known to have preexisted, it is judged to persevere in its condition until it is removed by sufficient proof of the adverse part. But in the matter of justice, the preexisting condition is nothing other than possession of some thing. Whence from the principle of presumption arose the principle of possession. Therefore in the matter of strict right, the aforesaid principle signifies this: In an equal cause, or in doubt, rights favor him who, besides a doubtful title common to himself and to his adversary, has besides the title of possession. For possession founds a certain presumption of true dominion, until the contrary is proved; for example, he who with a just title possesses an estate, which another claims for himself with doubtful right, remains in possession, nor ought he to be despoiled, until the competitor has legitimately proved that he enjoys a better right (cf. n. 850).
2. In the matter of legal justice and of the other virtues, the principle of possession is taken only analogically, insofar as whatever right precedes the doubt that has arisen, by evident analogy with the possession of a temporal thing, is to be protected in the same way as possession itself. Therefore in matter which wanders outside strict justice, the principle of possession (reason itself dictates this) has this sense: every thing which from its nature perseveres stably until it is removed by some supervening fact is judged to remain in its condition so long as the contrary is not established.

Considered thus, the principle of possession can favor either liberty or law. Equity demands that preexisting rights, whatever they may be, be protected. Lugo excellently says (*de Just.*, disp. 23, n. 110): No better and more universal rule can be handed down than that which is drawn from the external forum. "It is fitting that each forum agree, insofar as it can be done," says D'Annibale (I, n. 264). So the doctors commonly.¹⁰

To the matter thus St. Alphonsus (I, 26; Diss. 1757, n. 19): "But this principle, although some attempt to weaken it, saying that it is valid only for the forum, or only in the matter of justice; yet I do not know how it can be denied in all things. The question can only be whether in any moral doubt the law or liberty possesses. The Antiprobabilists say that the law always possesses; but we say that sometimes the law possesses, sometimes liberty, namely when the law has not yet been promulgated. This, I say, is the question; but no one can deny the principle, that the condition of the possessor is always better. Therefore in the case in which the law possesses, one must stand for it; but if liberty possesses, one must stand for liberty."

⁹I, 26; see H. Ap., I, 14, where this principle alone is brought forward for doubtful conscience, and *Conf. dir.*, I, 11, where it is said: "Among the others, in the first place this is a certain principle: melior est... etc."

¹⁰Suarez, in 1.2, tr. 3, disp. 12, sect. 3, n. 8; Lugo, *de Just. et Jure*, disp. 23, n. 110; Lacroix, book I, n. 502 ff.; Reuter, P. 1, n. 82, etc. Schmitt, S.J. (*Gesch. des Probab.*, p. 171), rightly notes that the principle: a certain obligation is not removed by an uncertain solution, was admitted by all without exception up to Laymann (d. 1635). But this principle receives its strength from the principle of possession, taken analogically.

45. Therefore some assert gratuitously that the principle of possession has force only in negative doubt alone, or that with it the law always possesses, or that it is a mere fiction of law or equivocation.

Here, however, it is useful to notice that the principle of possession, in the matter of justice, is of stricter application than in the matter of the other virtues. The reason: 1. Because justice is more rigid than the other virtues (cf. n. 383). Whence it happens that lawsuits concerning justice demand stricter proofs; while the dispute which morally is moved between liberty and law is settled, as is fitting, by moral proof. 2. Because in the matter of justice, at least in goods of fortune, possession produces a presumption both for the possessor and against the plaintiff; for the possessor: for he, so long as the contrary is not certainly proved, is presumed to possess by force of his right; but against the plaintiff, because the plaintiff is presumed to be destitute of possession by right until the contrary is proved.

46. II. A DOUBTFUL LAW DOES NOT OBLIGE, or: A doubtful law cannot induce a certain obligation.¹¹ This principle is a universal principle, which is applied in every law, both divine and human, whenever there is question of a doubt of mere law, as we shall prove n. 91. But if the matter concerns probabilities or doubts of dangerous fact, some certain antecedent law forbids every use of doubt or probability, as is shown below (n. 80).

Now the aforesaid principle, according to St. Alphonsus, must be understood: 1. of a strictly doubtful law; 2. of an invincibly doubtful law, that is, of a law which, after diligent inquiry, certainly remains doubtful; 3. of a law simply doubtful, that is, of a law doubtfully existing. "For if the law is certainly established and certainly promulgated, and thence arises a doubt whether it has been abrogated or dispensed, it is to be observed, because then it possesses."¹² Therefore in doubt concerning the cessation of a law or obligation, the principle is to be converted in such a way that it is said: "Doubtful liberation does not liberate."¹³ But that the axiom "A doubtful law, etc." was in this sense truly used by most theologians, Muzzarelli testifies, saying: "Similarly, if the matter concerns the cessation or abrogation of a law, doubt in that case must be said to favor liberty in nothing, but one must stand for the law, which is in possession against liberty. In this all doctors agree." So also D'Annibale, I, n. 266.

II. Subsidiary Reflex Principles by Whose Help Possession Is Discerned in Doubt

47. From the things just said it is clear that reflex principles can be recalled to one principle, namely to the principle of possession. But it does not always appear at first glance what possession favors, whether namely the law or liberty. The general rule is this: "To discern for which part possession stands in doubt, one must see for which part presumption stands. But presumption stands for that part which is not itself bound to prove the fact, but transfers the burden of proving it to the other" (I, 26). The reason is that rights (for example liberty or obligation), by their nature, are stable and are judged to persevere until a change is proved. Therefore it belongs to the one affirming the change to bring proof, by demonstrating namely the existence or force of a certain fact by which the preceding right is changed, or the possessor is overcome (cf. n. 97).

Here moreover certain very well-known principles of law have force, which regard either the substance of the fact or the conditions of the fact.¹⁴

A. Principles Which Regard the Substance of the Fact

48. I. In doubt the fact is not presumed, but is proved; that is, the fact concerning which doubt is involved is reputed not to exist, until sufficient proof is brought which persuades a prudent man. When this proof is lacking, all things are judged to remain in the same state in which they were found before the doubt arose.

But the fact concerning which inquiry is made can either found the law (for example, promulgation of the law, emission of a vow), or suppose the law (for example, abrogation of the law, fulfillment of a vow). In doubt of a fact founding the law, liberty possesses; in doubt of a fact supposing the law, the law possesses. Whence the aforesaid principle favors now liberty, now law (cf. n. 55).

Note. To the same principle are recalled those three sayings: 1. No one is presumed evil unless he is proved so: for everyone by his nature is good. 2. Crimes are not presumed: whence the judge ought to condemn no one unless he has been proved guilty. 3. In doubt of crime one must favor the accused. Reg. 11 in VI agrees.

¹¹I, 27, 28, 64 ff., 97-99; H. Ap., I, 15, and elsewhere passim.

¹²I, 27, 76; Diss. *dell'Uso moder.*, 1765, c. IV, 6-15.

¹³Kon., n. 66, 29.

¹⁴See, for a fuller knowledge of the Rules of Law, the very distinguished work of Cardinal Sanfelice, *Fundamenta Juris can.*, P. I, or another learned canonist.

49. II. In doubt the proof falls upon the plaintiff.¹⁵ Moral doubt generates, as we have said, a certain lawsuit between law and liberty. One part defends the former state, which the other part, on account of a fact alleged by itself, contends should be changed. This part is called the plaintiff, and the burden of proving the fact falls upon it.

From this principle it follows: 1. If the law requires certain qualities, or prescribes special conditions (for example knowledge, age) for this, that a benefice or office, a state or dignity, a privilege or exemption be obtained, etc., the petitioner assumes as it were the part of plaintiff, and is bound to prove the fact alleged by himself.

2. On the contrary, if the law, on account of some fact, prohibits me from a common right, it belongs to the law itself to prove the truth of the fact, so that it may be established that on that account I am despoiled of the common right. Thus, for example, in doubt whether I am fasting, whether after midnight I swallowed something, I can communicate. For the law is prohibitive, and forbids anyone to communicate after food has been taken. Whence the fact of the fast broken must be proved, so that someone may be prohibited from communion (I, 38; VI, 282; H. Ap., XV, 34).
3. III. In doubts judgment must be made from things ordinarily occurring. If direct proof of the fact cannot be had, indirect proof can often be had from legitimate presumption, which indeed furnishes moral but sufficient certitude. Therefore then the cited rule has force, or: From things commonly occurring a prudent presumption is made. These axioms are received by all and agree with the forty-fifth rule in VI: In obscure things we inspect what is more likely, or what for the most part is accustomed to happen.

Hence, in doubt whether a child has arrived at the use of reason and is bound by ecclesiastical laws, he is presumed to have arrived if he has completed the seventh year; otherwise not. In doubt whether you have recited part of the Hours, you prudently presume that you have recited it, if in recitation you are regularly accustomed to omit nothing. In doubt whether someone has consented to depraved thoughts, he is presumed to have consented if he is of lax conscience; otherwise, if he is of timorous conscience (III, 270, 1012; IV, 150; VI, 476).

B. Principles Which Regard the Conditions of the Fact

51. I. In doubt one must stand for the value of the act, or: In doubt every fact is presumed to have been rightly done. These principles have force when the principal act indeed is established, and there is doubt only concerning an adjunct, for example, concerning a required condition, concerning the due mode. In these cases, so long as the opposite is not established, that is presumed to have been done which had to be done for the validity of the act, and which is accustomed to be done (III, 196, 201, q. 3; VI, 450, 505). The following sayings have the same sound: In doubt the fact is presumed which by law had to be done. A defect is not presumed, but must be demonstrated. What is regularly, what is ordinarily done, is judged to have been done.

From this rule (which rests on the preceding one) you will conclude: Given that they certainly have been placed, contracts, a vow, dispensation, the election of a superior, recitation of the breviary, Baptism, confession of sin, sacramental satisfaction, absolution, consecration, marriage, and like things are supposed valid. Except unless a positive reason to the contrary is had, or unless a law of this kind stands in the way, which demands certitude in every way.

52. II. In doubt presumption stands for the superior; that is: in doubt whether some command, imposed by a superior, is wise or just, regularly it must be obeyed.

We said, regularly it must be obeyed; for the case is excepted in which the law or precept certainly would be of excessive labor or difficulty, or would bring grave harm. But this exception is admitted by force of another certain principle, that is, by force of *epikeia* (cf. n. 173), or also by force of the following rule.

This principle is a certain particular application of the preceding principle. For since the principal fact, that is, the command, is established, the command is supposed to have been rightly made. The reason is that the superior is judged to be led by counsels unknown to the inferior, and to judge more prudently than the inferior concerning counsels known to him. Add that the power of commanding is a certain right, of which a legitimate superior cannot be despoiled in doubt (I, 31; IV, 47).

53. III. In doubt favors are to be enlarged, odious things restricted. By favor here is understood whatever indulges liberty, or grants grace, without detriment to right; but by odium, whatever imposes penalty, obligation, or burden. Cf. the treatise on Laws.

¹⁵Leg. 2, ff. *de probationibus*, and books 2 and 23, C. same title.

The following rules agree with the aforesaid principle: It is fitting that odious things be restricted and favors enlarged. In obscure things, what is least is to be held; understand: what burdens less. In penalties, the more benign interpretation is to be made. The reason for all these is the benevolence or prudence of the superior, which are legitimately presumed (Reg. 15, 30, 49 in VI; cf. Diss. 1757, n. 7).

54. It is asked: When must the rule be applied: IN DOUBT THE SAFER PART IS TO BE CHOSEN?

Resp. This rule of law is to be applied:

1. In practical doubts. Hence, if someone does not wish or cannot lay aside a practical doubt by some principle, whether direct or reflex, he is bound to choose the safer part (cf. n. 42).
2. In doubts of dangerous fact, namely when there remains a danger of bringing upon oneself or others a temporal or spiritual evil which must certainly be prevented, as will be explained below (n. 81). Apart from these cases, in which the law certainly possesses, the aforesaid rule of itself is of counsel, but by no means of precept (I, 77).
3. From the principles brought forward up to this point these general consequences flow (I, 97 ff.):

I. LIBERTY possesses, and therefore the law does not oblige:

1. In doubt whether a law has been established, or promulgated in the due manner; whether it imposes such a work; whether it has such a sense; whether it truly prescribes, or only persuades; whether it is extended to such a case, to that territory or subject; whether the superior (who is not yet in peaceful possession) enjoys legitimate authority.
2. In doubt whether a vow was emitted; whether it extends to this or to that; whether a pact or promise was made; whether some debt was contracted.
3. In doubt whether the obligation of the law has begun: for example, if on Thursday toward midnight you doubt whether the day of abstinence has already begun; likewise, if you doubt whether you have reached the age for undergoing the law of the Church.

In all these and similar cases, doubt is truly involved concerning the existence of the law or its beginning; and therefore the law is doubtful, and liberty remains whole (I, 27, 34, 195; VI, 468, 473 ff.).

II. But the LAW possesses, and therefore liberty remains bound:

1. If you doubt whether a law, certainly promulgated, was afterward abrogated, revoked, dispensed, or abolished by contrary custom. Likewise, if you doubt whether the law is just, or was received; whether the superior prescribed rightly and justly.
2. If you doubt whether the obligation of the law has ceased, for example, whether you are a sexagenarian and therefore released from the law of fasting; whether the day of abstinence or fasting has already entirely passed, for example on Saturday toward midnight.
3. If you doubt whether you have fulfilled the law, for example, whether you recited the Divine Office, whether you satisfied the precept of confession, sacramental penance, a vow, the obligation of a contract, the payment of a certain debt, etc.

In these and similar cases (unless the doubt is only concerning the value of the act fulfilling the law, as was said above), the principle of possession favors the law, and accordingly your liberty is bound, until it is morally certain that you have satisfied the law, or that the bond of the law is already dissolved (I, 26 ff.; VI, 475).

56. Note. The things which we have just said concerning the formation of a practically certain conscience by reflex principles are not equally approved by all. When the matter concerns a positive doubt, others follow other opinions. Hence that celebrated controversy CONCERNING PROBABILISM arose. Since this question is of the greatest moment, we judged it opportune to treat the great argument more accurately: not because new rules must be handed down, but because those already set forth must be weighed more diligently and confirmed by fitting reasons, since the whole MORAL SYSTEM of St. Alphonsus rests upon them.

Chapter III

On Probable Conscience

St. Alphonsus, I, 40; ed. G., I, p. 21; H. Ap., tr. I, n. 21; Beaudouin, *de Consc.*, q. IV, 1; Gaude, *de system. S. Alph.*, c. II; Ter Haar, *de system. mor. antiq. Probab.*; Valensise, *super system. Theol. mor.... disquisitio*, p. 35; Lehmkuhl, I, n. 156; Noldin, I,

n. 222; Genicot, I, n. 63.

57. Notion. Probable conscience is defined by St. Alphonsus (I, 40): "Conscience by which someone, relying on some probable opinion, forms for himself a practical dictate of reason, from certain reflex or concomitant principles, for acting licitly."

Thus defined, probable conscience is a right rule of morals, since it furnishes a practical and indeed certain dictate concerning the honesty of the action.

Order of things to be said. In probable conscience two things are distinguished: namely the probable opinion itself, on which we rely, and the formation of the practical dictate, which is made through reflex principles by which the use of the opinion is determined. Wherefore there must be treated: 1. the nature of probability; 2. the use of probability.

Article I

On the Nature of Probability

58. Definition. Opinion is an assent of the mind toward one part of a contradiction with fear of the other (St. Thomas, I, q. 79, a. 9, ad 4). Insofar as it is assent, opinion differs from doubt, which is a suspension of judgment assenting to neither part. Insofar as it is with fear of the opposite part, it does not signify a departure from the part to which it assents, but a defect of the firmness of science, and thus it differs from science strictly so called, and from certitude, which is an assent excluding founded fear. See what was said n. 33.

Probable, by force of etymology, signifies the same as what can be proved by reasons. But probability is an appearance of truth, which can arise from various causes and admits various grades.

A probable opinion can be considered both subjectively and objectively. Considered subjectively, it is the assent of the mind given to one part on account of a suitable motive persuading of its truth, yet fallible, and therefore with fear of the opposite part. Considered objectively, it is a proposition which rests on a grave foundation, either intrinsic, of reason, or extrinsic, of authority, which is able to draw to itself the assent of a prudent man, although with fear of the opposite. The things which the doctors commonly dispute concerning probable opinion regard opinion taken objectively.

59. Division. 1. By reason of the object, probability is of fact or of law, according as it is concerned with the truth of the thing or with the honesty of the action, as was explained above (n. 32, 2).
60. By reason of the foundation, probability is distinguished as intrinsic or extrinsic. Intrinsic is that which rests on the weight of reasons drawn from the nature itself of the thing; extrinsic is that which rests on the testimony and authority of doctors.
61. By reason of use, it is divided into speculative and practical (III, 700, note). Speculative (or remote) probability is the verisimilitude of an opinion considered in itself, insofar as it is an object of knowledge, without any application to work. Practical (or proximate) probability is the verisimilitude of an opinion considered with respect to work, insofar as namely, with all things weighed, it can serve for a certain and practical dictate of conscience (cf. n. 80, 2).
62. These things concerning the notion of probability having been premised, it must carefully be noted that probable opinions can be considered both in themselves and relatively or comparatively to the opposite opinions. But since this matter is of great moment, it must be set forth somewhat more fully.

§ 1. On Opinions Considered in Themselves

61. I. Intrinsic, absolute probability is the appearance of truth which an opinion bears before itself in itself, considered in its motives, and independently of any opposite opinion. From this it is clear that an opinion, considered in itself, is more or less probable according as the weight of the reasons on which it rests is greater or lesser. Hence various GRADES of probability are distinguished, which nevertheless all can be reduced in practice to three, namely to a solidly probable opinion, to a most probable opinion, and finally to a slightly probable opinion.

1. A TRULY AND SOLIDLY PROBABLE opinion is that which indeed rests on a fallible foundation, but on a foundation so firm that it can draw to itself the assent of a prudent man, although with fear of error.

But that such probability be present in an opinion, it is required: a) that it rest on a motive not of just any sort, but grave relative to the matter to be decided; b) that it be opposed neither to Sacred Scripture, nor to tradition, nor to the definition of the Church, otherwise its falsity would already be established; c) that there not be opposed to it a convincing reason to which no adequate response seems available (I, 79 and 82).

To the genus of opinions truly and solidly probable belongs a sufficiently probable opinion. For although the motive on which it rests is not of the same firmness as in an opinion which is called truly probable, nevertheless it is sufficient for moving the mind of a prudent man.

2. A MOST PROBABLE opinion (taken in itself and absolutely) is that “which rests on a very grave foundation, wherefore the opposite is judged slightly or doubtfully probable” (I, 40, 81). See what is to be said n. 71.
3. A SLIGHTLY PROBABLE opinion is that which rests on some foundation, but not such that it can draw to itself the assent of a prudent man.

Scarcely different from it is an opinion doubtfully, or even probably probable, which, although it is not wholly lacking a prudent motive that it is true, nevertheless does not have a foundation either certain or sufficiently grave, such as is required to constitute true probability (I, 81; *Vind. Alph.*, I, p. 8).

The reason why a probably probable opinion is not to be called absolutely probable is thus set forth by Viva: For just as certitude or evidence concerning the probability of an opinion does not pour certitude or evidence into the opinion itself, so probability concerning the probability of an opinion does not pour probability into the opinion itself (*Thes. de opin. probab.*).

Outside the limits of probability is an IMPROBABLE opinion which, as being opposed to a morally certain opinion, is judged destitute of every element of probability, and therefore deprived of every hope of truth (I, 40). Frequently, however, some opinion is called improbable, namely practically, although in itself it is not destitute of every probability (cf. n. 73).

62. Note. 1. Only learned men and those versed in moral matters can judge concerning the intrinsic probability of opinions, since they alone can know that nothing certain is opposed to them. For many times to men talented, but little instructed in moral science, that seems evident which the skilled judge false. As regards particular cases not discussed by theologians, that opinion is sufficiently probable for a learned and timorous man which, after a serious weighing of reasons and consultation of doctors, without disordered affection, he shall have judged to be such.¹⁶
63. The unlettered can with a safe conscience follow the opinion or counsel of a pastor or confessor, or of another prudent and learned man.
64. II. As regards EXTRINSIC probability, the following rules must be held:
65. An opinion which, while the Church tolerates it, is common among theologians must be held probable.

But the common opinion of theologians must by no means be confused with the unanimous opinion of theologians. Their unanimous opinion is no longer opinion, but a morally certain truth. For since all preachers, catechists, and confessors hand down that which is unanimously taught, if they erred, the Church, by dissembling a common error, would tacitly approve the false and would lead the Christian faithful into error, and therefore she herself would err. On the contrary, a common opinion is not a certain truth, but is only an opinion which approved authors generally hold, and to which therefore the greatest authority belongs.¹⁷ An opinion is called more common when notably more authors stand for it than for the opposite (therefore of itself it does not equal a common opinion); most common, when the consensus of authors is almost unanimous. Cf. Beaudouin, q. IV, dub. IV.

2. A proposition which several (at least five or six) theologians, distinguished in probity and judgment, hand down must also generally be judged probable.

We said generally: for only the Supreme Pontiff teaching from the Chair enjoys the prerogative of infallibility. And therefore, when there appears for some proposition a certain convincing reason or authority, to which no adequate response seems available, then the contrary opinion cannot be held as probable.¹⁸

3. One author does not suffice for some opinion to be called truly and sufficiently probable, if indeed the question is of an author of whatever note, since this proposition was condemned by Alexander VII under n. 27: “If a book is of some younger and modern author, the opinion ought to be judged probable, so long as it is not established that it has been rejected by the Apostolic See as improbable.”¹⁹

¹⁶Diss. 1757; *de Usu moder.*, n. LXXXIV, in *Op. mor.*, 3rd, 4th, and 5th ed.; Bassano ed., year 1763, n. LXXXV; Turin ed., year 1829, *ibid.*; Monza, 1832.

¹⁷Among older theologians, and at times also in St. Alphonsus, some proposition is called common even if many grave authors oppose it. Cf. Gobat (t. III, tr. 1, clyp. n. 22); Navarrus (*Manuale*, c. 27, n. 289).

¹⁸Diss. 1757, n. LXXXV (in some editions, n. LXXXVII, and so henceforth the other numbers cited here); cf. Croix, l. 1, n. 369.

¹⁹So taught Verricelli, Acacius de Velasco, Bishop of Orihuela, and others. Cf. Diss. 1757, n. LXXXV.

Yet if the matter concerns an author grave and of great name in the Church, and greater than every exception, we can, provided he teaches nothing against Scripture or the common sense of the Church, follow his opinion as probable.

4. Sometimes also, although rarely, the authority of one doctor can constitute an opinion probable, and even more probable against the common opinion of others; namely if that author is very learned, upright, and prudent, not a lover of novelties, and brings forward a valid reason which has not been sufficiently solved by others.²⁰
5. Lastly, a proposition must be judged probable which some great theologian testifies to be probable, although he himself hands down the contrary as more probable.²¹ But a great theologian is esteemed to be one who has great authority among theologians because of his excellent doctrine, prudence, and probity.

Such, according to St. Alphonsus, are: Suarez, Soto, Azor, Canus, Sylvius, Cajetan, Banez, Navarrus, Paludanus, Toletus, Sylvester, Lessius, Molina, Sanchez, Angelus, Vasquez, Armilla, Valentia, Laymann, de Lugo, Castropalaus, Bonacina, Emmanuel Sa, Pontius, Cabassutius, Collet, Roncaglia, the Salmanticenses, Petrocorensis, Abelly, Cardenas, Coninck, Gamachaeus, Isambert, etc., besides St. Thomas, St. Bonaventure, St. Antoninus, and Scotus, whose authority certainly ought to be preferred to others.²² Finally, to these most learned men St. Alphonsus comes to be numbered, whose authority we already know to be so great (cf. preface).

64. It is asked. Whether extrinsic probability constitutes true probability.

Resp. 1. There are those who wholly reject extrinsic probability; there are those who extol it too much. That extrinsic authority sometimes, with the things to be observed being observed, constitutes true probability is clear from Scripture (Prov. 22:17), where it is said: Incline your ear, and hear the words of the wise; and elsewhere (Prov. 3:5): Do not lean on your own prudence. But he is denied to lean on his own prudence who so obeys the authority of the wise that, on account of it, his own proper opinion sometimes being left aside, he girds himself for work (cited Dissertation, n. 80).

It is clear also from the response of the Sacred Penitentiary, issued in the year 1831 and confirmed by Gregory XVI: "that the confessor who in the tribunal of penance follows the doctrine of ST. ALPHONSUS DE LIGORIO is not to be disturbed, even if he does not weigh the arguments and reasons on which his various opinions rest, but on account of this reason alone, that in his works nothing worthy of censure was found." For unless extrinsic probability sometimes constituted grave, true, and firm probability, it is certain that this solemn declaration would never have been issued.

We said: with the things to be observed being observed, because for the practical use of extrinsic probability the rules of the moral system must be observed.

2. For the rest, if the matter is weighed well, it is clear that extrinsic probability is resolved into intrinsic probability. For from the fact that distinguished doctors hand down some opinion, there arises a valid presumption that that opinion is supported by grave reasons.

Whence St. Thomas (2.2, q. 4, a. 8, ad 2): "Someone of little knowledge is more certified concerning what he hears from someone scientific than concerning what seems to him according to his own reason." "And in truth," adds St. Alphonsus (l. c., n. 83), "if I, less learned, were to follow the opinion of St. Thomas against the reason which seems more probable to me, who would deny that I would act more prudently if, my own opinion being suspended, I deferred to so great an authority?"

65. Concerning the authority of writers (lest it be extolled too much), these things are to be noted:

66. The authority of writers is to be estimated not from their multitude, but from their gravity, and from the reasons on which they rest. Moreover, among grave authors themselves, those are to be preferred: a) who have treated the matter expressly;²³ b) who have confirmed by experience the doctrine which they hand down, for example, by hearing the confessions of many: for experience is the best mistress; c) finally, those who, led by love of truth alone (such as the saints are), devoted themselves to writing (cited Dissertation, n. 87). Cf. *Ami du Cl.*, 1900, p. 613.
67. As regards casuists, the more recent are to be preferred to the older, who wrote after the condemned opinions, namely concerning those questions which regard the condemned propositions, or which are related to them. Recall what was said n. 4.

²⁰Diss. 1757, n. LXXXV; *dell'Uso moder.* (1765), c. 4, n. 21.

²¹Cf. Diss. 1757, n. LXXXV.

²²Diss. 1757, n. LXXXVII.

²³Thus before others are proclaimed: Lugo, Lessius, on Justice; Suarez, on Laws; the continuator Tournely, on Obligations; Berti and Billuart, on the Sacraments; Tournely, on Baptism; Lugo, Salmanticenses, and Lacroix, on Penance; Sanchez and Pontius, on Marriage; Bonacina, on Censures; etc.

68. As regards the opinions of St. Alphonsus himself, it can most truly be affirmed: they generally enjoy the highest authority, or extrinsic probability. For: 1. All those things which conciliate the highest authority are fully present in the Blessed Doctor, namely holiness of life, singular love of truth, study and untiring investigation through many years, long experience, outstanding knowledge, and the highest obedience toward the Holy See. 2. His opinions, even those which depart from the common opinion of the older theologians, have now today become, at least for the most part, common or more common. 3. These opinions are taught universally, not only while the Church tolerates them, but while she truly approves them: approving them indeed not in a definitive sense, but in a sense both permissive and also elective; so that several times they have been commended by the Holy See itself to professors and confessors as sound, safe, and most salutary (*Vind. Alph.*, Preliminary Dissertation, § 2).

§ 2. On Opinions Taken Comparatively

67. Comparative probability is the appearance of truth which an opinion retains after comparison has been made with the opposite (cf. n. 58, 60, 61).

There are many opinions which, if they are considered in themselves alone and apart from opposite motives, strongly incline the intellect even of a prudent man to assent. Yet this does not happen if they are compared also with the reasons of the opposite opinion. Cf. IV, 72. Thus, for example, the testimony of a grave man, considered in itself alone, furnishes a probability of such a kind that a prudent man can rely upon it. But if to this testimony there are opposed the testimonies of two men equally grave, it is now evident that the first assertion no longer retains the same verisimilitude which it had, nor is a solid foundation any longer found in it.

Hence Viva rightly says: From the things said it is clear that an opinion is of slight probability if, for example, the foundation is grave of itself absolutely, but not grave comparatively to the arguments of the opposite part (*Thes. damn.* on prop. 3 of Alexander VIII, n. 10).

Wherefore, when knowledge or prudent doubt of some opposite probability arises, the obligation also arises of examining this opposite probability, and comparing it with the former (V, 4): otherwise an occasion would voluntarily be given to error (n. 40, 22). Indeed, by a general principle, prudence dictates that inquiry and comparison must be made, so that, with all things weighed, the right way may be found.

68. But once the comparison of opinions has been made, it comes to be defined in a general way: 1. by what notes they are distinguished among themselves; 2. what sort of doubt arises from their opposition.

1. By What Notes Opinions Taken Comparatively Are Distinguished Among Themselves

69. A comparison of opinions is instituted under a twofold respect: namely under the respect of security, and under the respect of probability in order to certitude.

I. By reason of security, an opinion is called safe, safer, or less safe.

Simply safe is that which removes the danger of sinning formally, whether it favors law or liberty. Such is an opinion morally certain, or one favored by reflex principles. Safer (with respect to the less safe) is that which favors the law; for he who, in a conflict of opinions, embraces the parts of the law, avoids even the danger itself of sinning materially, and therefore acts more safely. Finally, less safe is that which favors liberty, and brings with it at least some danger of material transgression (I, 40).

And hence it is clear that the more probable opinion is not always the safer opinion, since greater probability can be in favor of liberty. Thus, for example, for him who has fallen into mortal sin, it is safer to confess at once (the opinion of St. Bonaventure); yet he is not bound to this, according to the opinion of St. Thomas, which is less safe but more probable (Billuart, *de Consc.*, Diss. VI, a. 1). Cf. n. 1647.

70. II. By reason of probability, opinions are either equiprobable, or one is more probable than the other.

71. Opinions are called EQUIPROBABLE when the reasons for either part are equally or almost equally grave. We say almost equally grave; "because (as all probabilists and antiprobabilists agree), when between either opinion there is a slight preponderance, so that the excess is very slight and doubtful, then both opinions are judged equally probable, according to that common axiom: A little is reputed as nothing." So I, 55 (ed. 6 and 7); H. Ap., I, 77.

72. An opinion is called MORE PROBABLE for which graver reasons stand. But this is either a little or doubtfully more probable (to which, namely, a solidly or sufficiently probable opinion is accustomed to be opposed, as passim in the

work of St. Alphonsus), and then it is reduced to an almost equiprobable opinion;²⁴ or it is certainly more probable, and then it goes out from the limits of equiprobability.

Therefore a certainly more probable opinion is that which, after a weighing has been instituted of the reasons fighting for each opinion, is judged by the agent himself, without any hesitation, certainly preponderant (*Vind. Alph.*, P. 1, c. 1, § 1, a. 1). Such is, for example, an opinion which many more grave authors embrace, or which they with one voice call more probable.²⁵ But when some opinion “is certainly and without any hesitation more probable, then that opinion cannot be anything except notably more probable.” For such is the nature of moral matters that ordinarily a small excess cannot be perceived in a certain way, and a little is reputed as nothing (I, 55, X, in ed. 6 and 7).

71. For practice, a most probable opinion is equated with a certainly more probable opinion; it rests on a very grave foundation, so that the contrary is judged only doubtfully probable (cf. n. 31; n. 61, 2; n. 77).

To the matter Gaude (*Dissertation de moral. syst. S. Alph.*, p. 82): At most, the certainly more probable can be equated with the most probable; but neither always nor necessarily does it ascend to this grade. Between the doubtfully more probable and the certainly more probable no intermediate grade is found; but many can and must be thought out between the doubtfully more probable and the most probable.

Note. The word most probable (which, for the rest, St. Alphonsus uses very rarely) can be taken in a twofold sense. For it can signify: 1. the most probable of all the opinions which are subjected to examination; 2. the most probable in itself, or taken absolutely, that is, very or exceedingly probable. The Holy Doctor seems to take the word rather in this latter sense, as is clear from various examples.²⁶

72. Sometimes there occurs an opinion which is called UNIQUELY or SOLITARILY PROBABLE, that is, an opinion which is truly probable without any known probability to the contrary: whence it also has the force of a certainly more probable opinion. It can be defined: An opinion which rests on grave reasons, and on the adverse side is not shaken or weakened by other reasons or conjectures. For example, if an upright man seriously promises something, his promise is a grave motive which demands for itself the confidence of a prudent man, until from a certain argument, for example from a past violation of faith, the probability of infidelity appears.²⁷

73. These things having been thus defined, it is useful to propose a SCHEMA, from which it can clearly be seen at one glance how opinions are mutually opposed:

I.

True opinion / morally certain opinion (properly so called)

opposed to

Improbable opinion (absolutely and speculatively).

2.

Truer opinion / most probable (very grave) / more probable (notably, certainly, truly, absolutely)

opposed to

Slightly, doubtfully, not solidly probable; improbable (practically).

3.

More probable opinion (a little, doubtfully) / probable opinion (certainly, gravely, solidly)

opposed to

Probable opinion (equally, almost equally, sufficiently).

²⁴Let those note this well who think that St. Alphonsus is indeed an equiprobabilist in his system, but a probabilist in solving particular questions.

²⁵The distinguished Bucceroni and Arendt err when they contend that, according to the mind of St. Alphonsus, that opinion is certainly more probable which appears to all notably more probable, which by public estimation is notably more probable. For in the Dissertation from the year 1765 these things are read: “Even he who, according to the light of reason, judges that the opinion standing for the law is notably or certainly more probable, is bound to observe it, even if there is dispute among the authors.” Cf. Wouters, *de Minusprobab.*, p. 50 and 60.

²⁶I, 35; II, 23, end; III, 234, end; III, 520, question 4; VI, 222, toward the end.

²⁷I, 68, 74; III, 148, 562; VI, 702, Exception 4; cf. *Apolog.* 1764, 25 (Turin, 1829, p. 18; Monza, 1831, p. 326-330); and *Conf. dir.*, c. V, n. 9, where there are examples.

Note. Besides the three aforesaid grades of comparison, other intermediate grades are not to be attended to, because they cannot be discerned in a certain way. Therefore the various words which express the same grade in the proposed schema either express entirely the same thing, or only imply something of inclination toward a grade, whether higher or lower. And hence it is why St. Alphonsus teaches²⁸ that an opinion, even by a preponderance of one grade, is placed outside the limits of equiprobability, if indeed the grade is notable. “It suffices,” he says, “that an opinion be more probable by one single grade; but let this be understood rightly: this grade must be such that it renders me certain that the opinion is more probable.” Such will be, for example, a grave reason to which we do not see an adequate response to be available, or also the authority of some great doctor.

Therefore, in judging the comparative probability of opinions, the safer method is to inquire whether the excess by which one surpasses the other is certain or not. It suffices if it is held as certain, since this is a sign that it is notable. Behold the words of the Blessed Doctor: “When an opinion is certainly more probable even by one single grade, then it is also notably more probable, because this certitude of greater probability proves this probability to be so preponderant that it suffices to bend the scale (namely, of the mind); and therefore I assert that a certainly more probable opinion is the same as a notably more probable opinion.” Then, meeting the difficulty which could easily be opposed, he continues thus: “Someone will say that a weight of 10 ounces is certainly greater than a weight of 9 ounces, although the excess is not notable. I respond that this holds in physical matter; but in metaphysical matter, insofar as the matter concerns judgments of the intellect, I say that when the excess is certain, it is also notable; because, if it were not notable, neither would it be certain, but ambiguous and doubtful.” So to Father Blasucci (*Letters*, III, 219). So especially in the cited *Monitum*, 1773. Cf. *Letters*, III, n. 185, 188, 217. See the Dissertation *dell’Uso moder.*, 1765 and 1767.

2. What Sort of Doubt, or What Sort of Certitude, Is Had from Opinions Mutually Opposed?

74. From the opposition of opinions some doubt necessarily arises. But it is of very great importance to know whether that doubt is strict or broad.

I. If the opinions are EQUIPROBABLE, they mutually elide each other in order to obtaining prudent assent of the mind, and in this case there is strict doubt.

Behold the words of St. Alphonsus, which are, as it were, the hinge of his system: “When there is present from the other side,” he says, “an equiprobable opinion for liberty, then from neither side can any probability remain, or probable reason apt to draw to itself the prudent assent of man; for from these equal probabilities nothing results except mere doubt whether the law exists or does not exist... St. Thomas clearly teaches this (*de Verit.*, q. 14, a. 1)... For just as a balance is in equilibrium both when no weight is placed upon it and when equal weights are placed upon it; in the same way, when two probabilities or probable opinions occur, they so suspend the judgment as if no probability existed on either side.” “All probabilists and probabilitors commonly say the same.”²⁹

Note. Elision is either the removal of probability, or the prevention of only its effect, that is, of the power of moving the intellect to prudent assent (*Aerthys*, l. 1, n. 70). Contradiction between opinions can exist either in the reasons and conclusions together, or in the conclusions alone. With these things posited, an opinion can be ELIDED by an equiprobable opinion in a twofold way: 1. absolutely and speculatively, when the motives of each opinion are equal and at the same time contradictory, for example when two grave witnesses affirm some fact, and two others of equal faith deny it; then by the negation of these the affirmation of those is entirely destroyed (this case rarely occurs in moral controversies); 2. relatively and practically, when the motives are equal and disparate, and the opinions themselves, or rather the conclusions, contradict one another (when, for example, one says: It is lawful to paint on a feast day, and the other: It is not lawful); then the equal motives, although dissimilar, move the intellect equally for each part of the contradiction, and therefore prevent it from prudently adhering to one rather than to the other.

Indeed, the intellect can adhere to one rather than to the other; yet it will not adhere prudently and moved by the object, but only moved by the will. “In another way,” says St. Thomas (2.2, q. 1, a. 4), “the intellect assents to something, not because it is sufficiently moved by its proper object, but by a certain election, voluntarily declining to one part more than to the other.” But an election which is not led by reason cannot be free from imprudence and temerity.

From this it is easily understood in what way St. Alphonsus, speaking of equally probable opinions, could say: “Each is probable” (passim in the Moral Work), and “neither is probable, but only remains doubtful” (book I, 76, *Sed instat*). The sense of the words is: each opinion is probable, viewed in the force of its own reasons, by which hope of truth is begotten.

²⁸The author’s *Monitum*, at the end of t. III, ed. 7 (1773); cf. *Vind. Alph.*, t. I, p. 81, n. 2.

²⁹I, 68 (from the 6th edition only); *dell’Uso moderato*, work dedicated to Clement XIII, 1765, c. 3, n. 26-29; cf. *Vind. Alph.*, Apologetic Dissertation, n. 78 ff.

But neither remains probable (namely, expeditely), but each becomes doubtful, viewed in the force of the opposite reasons, by which fear of error is introduced (*Vind. Alph.*, Apologetic Dissertation, n. 88).

75. II. If one opinion is CERTAINLY MORE PROBABLE, the opposite, less probable opinion is elided, at least practically; that is, the mind cannot prudently assent to it as true, not even lightly; nor does it matter whether the motives on which the less probable rests are contradictory or disparate. The reason is that, the more someone opines on account of strong motives, the more he approaches the perfection of science and truth, and the more he recedes from the imperfection of ignorance and error (Beaudouin, l. c., p. 127). Therefore in the concurrence of unequal opinions, only the excess of weight has the force of attracting the assent of the mind; whence it happens that the certainly more probable opinion alone retains a firm foundation, or remains expeditely probable; and therefore in this case there is only broad doubt.

“When the safer opinion is certainly more probable,” says the Blessed Doctor,³⁰ “in that case, although the law is not entirely certain, nevertheless on account of that greater probability, the opinion for the law seems morally truer, and consequently (the law) appears morally and sufficiently promulgated, and therefore then it cannot be called entirely doubtful with a strict doubt: in that case there remains only some broad doubt, which does not permit one to depart from the safer opinion.” Hence “it happens that the less safe opinion, which lacks a certain foundation, remains either slightly, or at least doubtfully probable, with respect to the safer.”³¹ And elsewhere for practice: “A truly probable opinion is that alone which has intrinsic and extrinsic foundations equally or almost equally valid as the opposite for the law, so that the law appears strictly doubtful.”³²

76. If an opinion is UNIQUELY PROBABLE or not impugned, we are similarly involved in broad doubt. For since nothing appears to the contrary, an opinion of this kind already has a foundation morally certain, in a certain sense, that it is true.

Whence St. Alphonsus equates such an opinion, in the practical order, with a morally certain opinion, saying:³³ “In the case in which there were probable knowledge only for the law, then a certain moral certitude would assist the law.” And elsewhere: “A man remains bound by the law when he knows the law, but not when he doubts concerning the law. But does probable knowledge not suffice? By no means. It would suffice if probability were present only for the part of the law.” And in another place: “The word probably, if it is on one side, signifies a morally certain persuasion,” namely in a broad sense.

The same has force for practice if someone, relying on a grave motive, invincibly does not advert to the arguments of the opposite part. To the matter thus Viva:³⁴ “Therefore, if someone adverts only to a foundation of this kind grave in itself, and invincibly does not advert to the arguments of the opposite part, by reason of which that foundation is simply light and that opinion is of slight probability, he will not sin by bringing an opinion of this kind into practice, and this per accidens, not per se.”

77. Note. A certainly more probable opinion (or even a most probable one) must not be confused with a morally certain opinion properly so called: for probability, as such, always includes fear of error, and therefore excludes moral certitude strictly so called.³⁵ Nevertheless, if an opinion, after comparison has been instituted, appears preponderant and certainly more probable, it furnishes a sufficient foundation for forming conscience; since the opposite becomes doubtfully probable, that is, it introduces doubt whether in these circumstances it is such that a prudent man can assent to it. And therefore although a certainly more probable opinion, speaking speculatively, is not morally certain, nor excludes prudent fear of error, nevertheless practically it must be held like a morally certain opinion, or it is morally certain, speaking broadly.³⁶ And similarly, a certainly less probable opinion, although perhaps in itself and speculatively not lacking a grave foundation, nevertheless in practice must be equated with a slightly probable one (cf. n. 103).

78. From the things said up to this point, this twofold rule must be established for determining the state of any controversy:

³⁰I, 62, 88; H. Ap., I, 77.

³¹H. Ap., I, 31; book I, 54, from ed. 6 and 7.

³²*Dell'Uso moder.*, c. 5, n. 25. Cf. *Vind. Alph.*, Apologetic Dissertation, n. 91.

³³I, 68, 74, v. *Ceterum*.

³⁴*Apolog.*, 1764, 5.

³⁵I, 40; H. Ap., I, 20, 65.

³⁶I, 40, 56 (ed. 6 and 7); H. Ap., place cited. Cf. *dell'Uso moder.*, c. I, n. 1, 2.

79. As often as opinions occur in which there is either equal probability, or almost equal probability (because namely one is solidly probable, the other doubtfully or a little more probable), so often we are involved in strict doubt.
80. But as often as on either side there occurs an opinion certainly more probable (or most probable, or uniquely probable), so often there is moral certitude broadly taken, with broad doubt. But if finally some opinion is demonstrated absolutely improbable, every doubt is so overcome that there is now, for the proposition contradictory to this opinion, moral certitude properly so called (*Vind. Alph.*, Apologetic Dissertation, n. 96). See the schema under n. 73.

The nature of probability having been known, its use must now be discussed.

Article II

On the Use of Probability

79. The argument of great moment, whose treatment we undertake, can be stated in these words:

How a certain dictate of conscience can be formed when, on account of diverse opinions, one of which stands for the law and the other for liberty, direct certitude cannot be had. Here a solution concerning the particular case is not sought, but a certain and universal norm by which it may safely be discerned both when it is lawful to follow an opinion favoring liberty and when we are bound to follow an opinion favoring the law.

To solve this question a twofold case must be distinguished: according as the question is moved concerning only the honesty of the action, or there intervenes the danger of some evil absolutely to be avoided, which does not depend on the dictate of conscience. In the latter case, the use of probability is entirely unlawful; but in the former case, it can be lawful.

§ 1. On the Unlawful Use of Probability Where There Intervenes the Danger of Some Evil Absolutely to Be Avoided

80. All theologians, at least the more recent, teach that the use of probability is not lawful in any matter whatever; for there are circumstances in which, antecedently to every doubt, the law of choosing safer things possesses (cf. n. 42 and 54).

For easier understanding of the question, a threefold danger in the use of a probable opinion must be distinguished, namely danger of error, of sin, and of an evil effect (*Vind. Alph.*, P. I, c. 1, § 1, a. 1, n. 3).

1. The danger or fear of error, with which the danger of materially violating the law is necessarily connected, is always present in the use of a probable opinion, as is clear from the very notion of probability. But such a danger, when moral diligence for finding the truth has been made, we neither can nor are bound to avoid, because the error, if it is present, is invincible (cf. n. 95).
2. The danger of sinning formally is wholly removed in doubt of mere law by reflex principles. For conscience, relying on these principles, drives away practical fear and forms for itself a certain and prudent dictate concerning the honesty of its action, as was shown above (n. 38-39) and will be confirmed below.
3. Another danger, diverse from formal transgression of the law, can intervene in doubts of fact, namely the danger of some damage or evil, temporal or spiritual, on the part of the thing. Thus, for example, homicide embraces both moral evil, or sin, and physical evil, or grave damage, which is inflicted on the neighbor by deprivation of life. Here the matter concerns this last danger.
4. Principle. Whenever in doubts of fact there intervenes danger of damage or evil which does not depend on conscience and which we are certainly bound to avoid, the use of any probability whatever is unlawful, and the safer part is to be followed. So commonly, against certain laxists.

Proof. It is not lawful to expose an end absolutely to be pursued (such as that concerning which the matter here is) to the danger of frustration. But, the safer part being left aside, a danger of that sort (in the case) is not avoided; for, whatever may be true concerning the probability of the opinion, that danger perseveres in the thing itself; nor can it be removed by reflex principles, since it does not depend on the conscience or persuasion of the agent, but on the fact itself.

Thus an opinion, however probable, cannot make what is not a sacrament be a sacrament, or make what is rather poison be medicine.³⁷ Namely, in cases of this kind, the matter is not about a doubtful law, but about a certain law, which forbids us to incur the danger of disturbing another from the certain possession of his right. Wherefore St. Alphonsus: "If," he

³⁷ *Dell'Uso moder.* (1765), c. 1, n. 4 ff., and c. IV, n. 32; and Suarez, ad 1.2, tract. 3, disp. 12, sect. 6, n. 10.

says, “an arrow is shot in probable doubt whether that object is a man or a beast, one does not act against a doubtful law, but against a certain law: for in such a case the law is certain, that the life of one’s neighbor, who has a certain right not to be injured, not be cast into probable danger” (H. Ap., I, 68).

We said: Danger of evil which we are bound to avoid; for sometimes there are just causes of permitting evil, indeed of creating the danger itself from which evil may arise: either because between two evils the lesser must be chosen, or because the safer part is judged morally impossible, or because the neighbor is not in certain possession of his right. In cases of this kind, it is lawful, the safer opinion being left aside, to choose the less safe (cf. n. 315).

82. But the necessity of an end absolutely to be pursued can arise from the law, whether of religion, justice, or charity, either toward oneself or toward one’s neighbor. Whence the following flow:

Corollaries. I. In the conferral of the sacraments the minister cannot, concerning their value, use an opinion either probable or even more probable; but he is bound to follow a safe opinion, such as one which is either safer or morally certain. This is clear from the first proposition proscribed by Innocent XI: “It is not unlawful in conferring sacraments to follow a probable opinion concerning the value of the sacrament, the safer being left aside.”³⁸ The reason for the condemnation is that to confer a sacrament with only a probable opinion is contrary not only to charity, on account of the danger of grave harm, but also to religion and the reverence owed to the Author of the sacraments.

Except 1. If necessity urges, and by the use of an opinion even slightly probable concerning the value of the sacrament, the salvation of the neighbor is better consulted. For since men are not for the sacraments, but the sacraments for men, it is lawful to expose them to the danger of frustration, so that in this way, in the best way possible, help may be given to the salvation of a man certainly in danger. Hence, when certain matter is lacking, an infant who is in danger of death must be baptized with doubtful matter. Yet he is to be baptized under condition, lest injury be inflicted on the sacrament if perhaps it is made invalidly.³⁹

2. Unless the Church can and is reasonably presumed to supply: which indeed can be done either in the sacrament of penance, if from a just cause it is administered with jurisdiction probable by probability of law; or in the sacrament of marriage, if there is present an impediment introduced by ecclesiastical discipline, also probable by probability of law.⁴⁰ But when the Church supplies, there is practically moral certitude, and therefore the sacrament is to be conferred not under condition, but absolutely. See more in the Treatise on Penance and on Matrimony.

Note. The question is whether in the reception of the sacraments it is lawful to use a probable opinion. Some affirm; but others not undeservedly deny, both because it is against the reverence due to the sacraments to expose them to danger of frustration, and because the opposite opinion can almost never be brought into practice without detriment to one’s own soul (I, 51).

83. II. It is not lawful to use a probable opinion in danger of one’s own damage, whether spiritual or temporal, necessarily to be avoided.

Hence: 1. In things necessary for salvation by necessity of means, for example in the matter of faith, the safer religion must be followed, which, without doubt, is our Catholic religion. The reason is that in things absolutely necessary for salvation, persuasion of conscience does not remove the danger of damnation. Therefore in these things the axiom has force: No security is too great where eternity is in danger. And the following fourth proposition was deservedly condemned by Innocent XI: “An infidel not believing, led by a less probable opinion, will be excused from infidelity.”⁴¹

2. In a proximate occasion of sin, and generally in every probable danger of sinning formally, the safer thing must similarly be chosen, as will be explained more fully in its place (n. 373 ff.). Hence it is unlawful to follow several opinions which are indeed speculatively probable, but which, with attention to the common or special fragility of the one acting, are in practice certainly joined with probable danger of a fall into formal sin. Opinions of this kind are concerned with reading prohibited books, with kisses, touches, dances, comedies, the matter of simony, etc.
3. In danger of life it is not lawful, without necessity, to expose oneself to probable death, for example, by taking food probably harmless and probably poisonous.⁴²

³⁸I, 48; H. Ap., I, 25. This proposition was taught by very many ancient probabilists. Cf. Ter Haar, *de syst. mor. ant. Probab.*, p. 91; Viva on this proposition; Schmitt, *Gesch. des Prob.*, p. 65, 114.

³⁹I, 49.

⁴⁰I, 45, 50; VI, 572, 573, 901; H. Ap., I, 27.

⁴¹Cf. I, 43, and H. Ap., I, 22. Thomas Sanchez favors the condemned opinion (*Sum.*, I, 2, c. 1, n. 6).

⁴²*Dell’Uso moder.*, c. I, n. 9, and c. IV, n. 32.

84. III. It is not lawful to follow a probable opinion in danger of spiritual or temporal harm to the neighbor, whenever the neighbor is in certain possession of his right.

Wherefore: 1. on account of the scandal of the neighbor, we are sometimes bound to observe a law which probably or even certainly does not exist.⁴³ Hence St. Paul (1 Cor. 8:13): "Wherefore," he says, "if food scandalizes my brother, I will not eat flesh forever, lest I scandalize my brother."

2. In healing, the physician is bound to apply the safer remedies. But if the case were desperate, it is sufficiently probable that it is lawful to use a doubtful remedy, that is, one probably going to help and probably going to harm; because, in a case of this kind, some hope of life is to be preferred to the danger of hastening death. But for the sake of experiment alone it is not lawful to apply wholly uncertain and untried remedies to the sick, even to the desperate, with danger of gravely harming them (I, 44 ff.).
3. In the direction and care of souls, the confessor is bound, regularly, to follow benign opinions, which commonly remove penitents more from the danger of formal sin. "But where benign opinions render proximate the danger of formal sin, as are some opinions of authors, for example, as to avoiding proximate occasions, and others of that kind; then it is always expedient that the confessor use, indeed I say that he himself, as a physician of souls, is bound to use the safer opinions, which conduce to preserving penitents in the state of grace" (I, 83; VI, 456).
4. In civil judgment, if neither party possesses, the judge is bound to render sentence in favor of that party for whom the more probable opinion stands. The reason is that the judge, by divine and human precept, must render to each his right, according to the greater weight of reasons which favor each one. Hence proposition 2 was condemned by Innocent XI: "I think it probable that a judge can judge according to an opinion even less probable."⁴⁴ But if the cause of each litigant seems equally probable, he must divide the contested thing, or its price, equally. The reason is that he himself is not the master of the things, but the distributor according to the rights of the parties. Hence proposition 26 was condemned by Alexander VII: "When litigants have for themselves equally probable opinions, the judge can accept money for rendering sentence in favor of one rather than the other"⁴⁵ (I, 47).

Note. It was said: a) In civil judgment; because in criminal cases, where the matter concerns inflicting a penalty, especially a capital one, among opposed probable sentences the sentence favoring the accused must always be followed, even if it is less probable; otherwise the judge would expose himself to the danger of condemning an innocent man, which is intrinsically evil. b) If neither party possesses; because if one of the litigants possesses the thing in good faith, and has for himself a probable reason, he cannot be despoiled, even if the other adduces more probable reasons for himself. For legitimate possession gives the possessor a certain right of retaining the thing, until the right of the other is evident (I, l. c.; IV, 210). Cf. above n. 45.

5. In hunting, the hunter who doubts whether that which he sees in the forest is a wild beast or a man cannot strike it, even if he thinks it more probable that it is a wild beast.

The same must be said in similar cases (I, 52).

§ 2. On the Lawful Use of Probability

Where the Matter Concerns Only the Honesty of the Action

The theologians, for whom there is morally one and the same sense concerning the use of probability where the matter concerns the danger of an evil absolutely to be avoided, by no means concur in the same opinion in the treatment of the present question; but different men devise different systems, which more or less favor either law or liberty. These systems must now be set forth briefly, so that afterward the system of St. Alphonsus may be better understood, and both the truth and the security of that system may become more clearly known.

Various Systems for the Selection of Opinions

85. STATE OF THE QUESTION. 1. By a moral system is understood a complex of rules by which moral controversies, arising from probable opinions, are settled in practice.

⁴³I, 97.

⁴⁴For this proposition Diana (t. VIII, tr. 1, Resol. 20-22, 25) cites more than forty theologians. Salas calls it the common opinion of theologians (Ter Haar, l. c.).

⁴⁵Lessius, Ledesma, and others seem to have taught these things (cf. Viva, *Thes. damn.* on this proposition).

2. The end of a moral system is to indicate how, in practice, one arrives at a morally certain conscience, so that each one may act safely.
3. The matter of a moral system is only those doubts in which the matter concerns the honesty of an action, as we said above.
4. Five moral systems chiefly are numbered, devised by authors, namely: 1. rigorism (or tutorism); 2. probabiliorism; 3. equiprobabilism; 4. probabilism; 5. laxism. To these in our times has been added the system of compensation.⁴⁶
5. 1. Rigorists are called those who admit reflex principles in no way, or only in a merely secondary way. They are also called anti-probabilists, because they reject every use of probability properly so called in a moral matter; and tutorists, because they teach that in doubt the safer part is always to be followed.⁴⁷ But they are divided, according to the grades of direct certitude which they require in order to act lawfully, into strict rigorists and mild rigorists.

a) The stricter rigorists require direct absolute certitude in order to act lawfully. Their dictum is: safer or certain.

Thus Sinnichius, Wendrochius, etc. This system was condemned through the following proposition proscribed by Alexander VII (the 3rd): "It is not lawful to follow an opinion, or even the most probable among probable opinions." Therefore at least a most probable opinion in favor of liberty is lawful, even if, by its nature, it does not go out from the limits of probability. The reason is that the opposite opinion rests on only a slight moment, on account of which natural right forbids liberty to be despoiled of its own right (cf. n. 40, rule 3).

Add that rigorism is: 1. alien to the evangelical spirit: for how could the yoke of Christ be called sweet, and his burden light, if we were bound always to follow the safer things? 2. contrary to the doctrine of the holy Fathers, as is clear from their testimonies, which St. Alphonsus reports; 3. very pernicious in practice: for it imposes an intolerable burden, increases sins, ensnares consciences, generates desperation, and builds unto gehenna (I, 60, 66, 82 ff.).

b) The milder rigorists teach that direct certitude is required in order to act lawfully, not indeed absolute certitude, but broad or moral certitude. These indeed permit the use of the most probable opinion, not because it is lawful to use a probable opinion, but because, in moral matters, a most probable opinion furnishes some broad certitude (H. Ap., I, 33). Their dictum is: safer or most probable.

Thus Fagnanus, Habert, etc. This system indeed has not been condemned, but we do not admit it. Cf. below the first Thesis (n. 91).

2. Probabiliorists teach that the safer opinion must be held, unless the opinion for liberty is manifestly and solidly more probable. Their dictum is: Safer or more probable.

Thus Billuart, Wigandt, and, among more recent authors, Pegues and others from the Order of St. Dominic. And the reason is that it is not lawful, they say, to incur a grave and founded danger of transgressing the law; which danger, they say, always threatens unless the opinion which stands for liberty is at least more probable than the other. But if the opinion which stands for liberty is truly more probable, they contend that there is only a slight danger of acting against the law, which danger can prudently be disregarded (Billuart, *de act. hum.*, Diss. VI). Against them likewise Thesis 1 will be established.

3. Equiprobabilists teach that in the concurrence of two opinions equally or almost equally probable (of which one favors liberty, the other law), while the doubt stands concerning the existence of the law, it is lawful to follow the opinion favoring liberty; but while the doubt stands concerning the cessation of the law, the opinion favoring the law must be followed. Outside the limits of this broad equiprobability, the uniquely probable or certainly more probable opinion prevails, whether this opinion supports the law or liberty. Their dictum is: The opinion for which possession stands, provided that it is equally or almost equally probable.

Thus, after several older authors, St. Alphonsus and his disciples, Aertnys, Konings, and others from diverse schools, such as Gousset, Scavini, Del Vecchio, Muller, Martin, Pruner, Simar, Berardi, Sweens, Farges, Beaudouin, Bejsens, Valensise, Koch, etc. Their reason is that in the concurrence of equiprobable opinions we are involved in strict doubt; but a strictly doubtful law does not oblige, and in an equal cause the condition of the possessor is better. More concerning this system at n. 88 ff.

⁴⁶Cf. Muller, I, 1, 277; Tanquerey, I, n. 415; D'Annibale, *Summula* (ed. 5), n. 8, 258.

⁴⁷Diss. 1757, n. I-II (*Op. mor.*, ed. 3, 4, and 5, n. 44).

4. Probabilists (in general) teach that in the concurrence of a probable or more probable opinion which stands for the law, it is permitted to follow a probable opinion favoring liberty, provided that this opinion is truly probable. The dictum of the probabilists is: The more benign, provided that it is truly probable. Their reason is that it is not lawful to impose an obligation concerning which there is no certain evidence; now, there is no certain evidence concerning the law where the opinion for liberty is truly probable; therefore.

Bartholomew Medina, O.P. (1.2, q. 19, a. 6, Commentary on St. Thomas), was the first who, in the year 1577, published this opinion: "If an opinion is probable, it is lawful to follow it, although the opposite is more probable."⁴⁸

This system is not sufficiently defined, nor is it circumscribed by certain limits. For, as it is commonly circulated: 1. it does not define whether an opinion favoring liberty ought to be relatively probable, or whether it suffices that it be absolutely probable; 2. while it grants the use of a less probable opinion, with the safer and even more probable one left aside, it does not define whether this has force concerning one a little more probable, or concerning one notably more probable. And this obscurity indeed is the cause why probabilists have entered upon a diverse way.

Some, teaching that it is lawful to follow a solidly probable opinion which favors liberty, understand solidly probable relatively, and therefore with only a probable, or a little more probable, opinion which stands for the law left aside. These agree in substantial matters with the equiprobabilists, and can be called moderate probabilists. Such are Suarez,⁴⁹ Vasquez, Lugo, Lessius, Laymann, Sylvius, Palaus, Viva, Abelly, Reuter, Voit, etc. We shall not act against these when we are about to attack probabilism. Yet we note that this moderate probabilism, since it carries before itself some ambiguity, by not determining sufficiently the less probable opinion, does not sufficiently guard against abuses, as St. Alphonsus has already complained.⁵⁰

But there are others, probabilists, who hold as sufficiently probable every opinion absolutely and in itself probable, without caring at all about relative probability; they also deny that the use of a probable opinion is to be confined within the limits of equiprobabilism, and therefore that an opinion becomes unlawful to which another certainly or evidently more probable opinion is opposed. Thus expressly Lacroix,⁵¹ Illsung,⁵² etc., whose doctrine comes under the name of absolute or common or pure, broad probabilism.

Finally, among probabilists, some reject the principle of possession, or do not admit it in the same circumstances as St. Alphonsus.⁵³

Now, just as probabiliorism is more rigid than is just, so absolute probabilism seems to be more benign than is right. The disadvantages under which it labors will be indicated below, where its refutation is treated (Theses II and III).

Note. Ter Haar treats at length the various kinds of the older probabilists (*op. cit.*, p. 20-85). If we consider the mind of more recent probabilists, some (for example, Lehmkühl) are to be numbered with the moderate probabilists, others (for example, Raphael a St. Joseph, Meffert, Ballerini) rather with the broad probabilists. It is especially to be lamented that several recent authors sometimes use more general and even rather obscure words, by which they seem now to approach absolute probabilism, now to recede from it. See examples in *Vind. Alph.*, I, p. 480 ff.

5. Laxists taught that it is permitted to follow any opinions whatever, even slightly probable ones. Their dictum is: The more benign, provided that it is probable in some way. Thus Caramuel, the prince of the laxists, Diana, and others.⁵⁴

This other extreme was condemned by Innocent XI in the 3rd proposition, which said: "Generally, while relying on probability, whether intrinsic or extrinsic, however slight, provided that one does not go outside the limits of probability, we always act prudently when we do something." This proposition was excerpted to the letter from Tamburini (*Dec.*, I, c. 3, § 3, n. 3). But deservedly was it condemned: for slight probability cannot be called true probability, just as slight

⁴⁸The older probabilists themselves concede that Medina was the first who taught the thesis concerning the less probable opinion. Lopez, for example, who was a contemporary of Medina, says: "I know that the common opinion is that of Soto, Corduba, Cajetan, Conrad, and Navarre, holding that it is not enough to follow a probable opinion, but that the more probable opinion must be followed; against Medina" (*Instruct. consc.*, P. 1, c. 120, concl. 2). Cf. Ter Haar, p. 18.

⁴⁹On 1.2, tr. 3, disp. 12, sect. 6.

⁵⁰*Apolog.* 4, ed. Monza, 1831, p. 151-152; Turin, 1831, p. 172.

⁵¹*I, de Consc.*, n. 301.

⁵²*De Consc.*, disp. I.

⁵³Cf. *Vind. Alph.* (ed. 2), Apologetic Dissertation, n. 114-124.

⁵⁴Cf. St. Alph., ed. G., I, p. 286; Muller, *Theol. mor.*, I, 278. The author there adduces the following words of Diana: "How many things I would have and would say, which would be too plausible to lovers of novelties, if I gave to pen and wit the free faculty of wandering! But, as I responded to the most wise Caramuel, residence at Rome and the dangers of others made me cautious in writing." P. 10, tr. 14, res. 56.

fortitude or slight skill cannot be called true fortitude and true skill, but ought rather to be called weakness and lack of skill (H. Ap., I, 30).

To these things is added that “that lax manner of opining is alien to the evangelical simplicity and the doctrine of the holy Fathers; if the faithful were to follow it in practice as a right rule, an immense corruption of Christian life would creep in.” Thus Pope Alexander VII, in the decree issued on September 24, 1665.

6. The system of compensation, which certain more recent authors defend (Manier, Lehu, Potton, Boisdron), states the general principle: Every law always obliges to some extent; but its force of obliging increases or decreases according to the degree of knowledge which we have concerning it. A law perfectly known obliges fully; wholly unknown, it does not bind; but imperfectly known, it binds imperfectly. But in order that, while a law imperfectly known stands, we may enjoy liberty, there is required on our part, as an excusing reason, a relatively grave inconvenience, by which the wound is compensated that we, by using our liberty, probably inflict on the law and on the moral order. The reason for this system is that the merely material transgression of a law is already a certain evil; for through this we inflict a wound on the law or moral order, because the law is frustrated in its end intended by the Legislator.

This system is not pleasing. The reasons are: a) because, as we shall say below (n. 91), it supposes that law obliges antecedently to promulgation: which smells of probabiliorism, indeed even of tutorism. b) Moreover, the rule handed down by those theologians seems very difficult, and in practice there will scarcely be place for it. For the inconvenience attached to the observance of the law will often be different for individual persons, indeed also for individual cases. Thus, for example, the gravity of the inconvenience in confessing a doubtful sin will be different both according to the different character of each penitent, and according to the nature of the sin to be accused, and often also according to the different character of the confessor before whom the accusation must be made. Hence that rule, on the one hand, furnishes occasion for many anxieties; but on the other hand, frequently exposes one to the illusions of self-love; and therefore it cannot be a prudent practical norm in resolving doubts. c) Finally, the foundation of this system is also preserved in our system of equiprobabilism, insofar as the number of laws which are prescribed to be observed in practice is most closely equated with the number of materially existing laws, and therefore the end of all laws in the universe is attained in the best way in which it can be attained.

Note. Cardinal D’Annibale (*Summ.*, I, 270) judged that the rule for the solution of doubts was to be drawn solely from possession. If this system is well understood and accommodated to practice, it rather approaches the system of St. Alphonsus. For the Holy Doctor (cf. Gaude’s Dissertation *de mor. syst. S. Alph.*, n. 26) calls the principle of possession supreme, most universal.

87. Therefore, with the stricter rigorism and laxism excepted, the remaining systems can be sustained without the condemnation of the Church. Among these, equiprobabilism holds the middle way, of which St. Alphonsus is the distinguished defender (*Vind. Alph.*, P. I, c. 3, Apologetic Dissertation, 143).

Historical question. That equiprobabilism is the genuine system of St. Alphonsus, which he definitively embraced at least from the year 1762, the *Vindiciae Alphonsianae* (I, p. 1-150), Gaude (*de mor. syst. S. Alph.*), Wouters (*de Minusprobab.*, ed. 2, p. 49), and many others clearly prove.

1. Before the year 1762, in two dissertations which he inscribed FOR THE MODERATE USE OF PROBABLE OPINION IN THE CONCURRENCE OF A MORE PROBABLE ONE, and of which he published one in the year 1749 and the other in 1755, he supported simple probabilism. But truly, as is evident from his various writings, these dissertations, published without the name of the Holy Author, were nothing except certain trials, certain preludes, or preliminary contests concerning a most grave question. For before the year 1762 (let this be well noted), in all and each of the editions of his Moral Theology, indeed also in other works of lesser moment which he brought into the light under his own name, he constantly asserted that he was prescinding from that thesis: Whether it is lawful to follow the less probable, with the more probable left aside. Indeed, in various works of this time there appears so much the constant inquiry of the Holy Doctor into the safe way, that it is not difficult (so the *Collationes Brugenses*) to find support in them for various systems.
2. After the year 1762, once the brief Dissertation, in the Italian language, *de usu moderato opin. probab.*, had been published, St. Alphonsus cast away his former hesitation, and constantly held those opinions which we shall set forth below. Much erudition and usefulness are brought, in relation to this question, by a comparison of the propositions of each edition of the Moral Work. Cf., on this matter, the preface of Father Gaude (I, p. xix), and especially the cited little work of the same author.
3. Although the system established by the Holy Doctor was received everywhere with great praise (cf. Berthe, *Vita di S. Alfonso*, II, p. 165), nevertheless the Saint himself never had an end of perfecting his work, so that he receded

ever more from absolute probabilism, and found the middle way between probabilism and probabiliorism. Thence it came about that he made public his celebrated *Monitum* (1773) and the golden little work, *Dichiarazione del sistema* (1774). When these had been added to the eighth edition of the Moral Work, and the probabilistic dissertation of Father Zacharia, S.J. (cf. n. 6), had also been expunged, St. Alphonsus could exclaim: “Joyful now I shall die, because this last edition, the work complete in all respects, has come into the light” (cf. Gaude, *de mor. syst.*, p. 38).

All these things, after the letters of the Holy Doctor were published and the excellent works of Father Gaude, lie open so clearly to theologians (even if, by reason of the controversy occasioned by Father Ballerini’s dissertation on the moral system of St. Alphonsus, held in the Roman College in 1863, they remained doubtful for a while), that now “they think it must be acknowledged, nor can it be denied, that St. Alphonsus, at least from the year 1762, was an equiprobabilist and rejected common probabilism.” “In vain,” they say, “do the very writers of the *Collationes Brugenses* (1906, p. 400) assert that the older St. Alphonsus taught equiprobabilism... whence the genuine and definitive opinion of the Holy Doctor is not to be sought in writings from 1762 and earlier, as the new probabilists did and do. Thus Lehmkuhl is not free from this error in the little work *Probabilismus vindicatus*.” To these sayings consent, besides the alumni of the Congregation of the Most Holy Redeemer, very many distinguished theologians, such as Bellesheim (*Katholik*, 1891, II, p. 245), who thus speaks: “The texts are thus clearer than the midday light, so weighty, that an opponent must be silent: St. Alphonsus truly taught equiprobabilism.” The same testify Schneider (*Liter. Rundschau*, 1895, col. 202), Koch (*Tubing. Quart. Schr.*, 1897, p. 70-126), Mausbach (*Die kath. Moral*, p. 181), Berardi (*Theol. fund.*, 1905, I, n. 55), Tanqueray (I, n. 405), Sweens (*Theol. mor.*, 688).

Finally let Genicot-Salsmans be heard, who in the last edition of *Theol. mor.* (1912) has these things: “In reality St. Alphonsus seems in his last works to have openly taught equiprobabilism, at least if we attribute to the words which he uses their native sense” (*de Consc.*, n. 81-72). Cf. Wouters, *de Minusprobab.*, p. 56.

Since these things are so, with the *Collationes Brugenses* we note that several probabilists do not always act critically when they at once recur to the probabilistic dissertations of the years 1749 and 1755. For in his letters the Holy Doctor clearly acknowledges that he made a retraction concerning common probabilism, which he previously professed, and this indeed, as he says, not for the sake of avoiding difficulty or persecution, but for the sake of conviction and conscience. *Corresp. gen.*, n. 818 and *Corresp. spec.*, n. 315.

Hence the defender of St. Alphonsus for the Concession of the title Doctor asserts without hesitation: “The Holy Author, from the year 1762, defended the system of EQUIPROBABILISM so openly, clearly, and constantly, that every reasonable doubt about this matter is excluded: which also the most ample Censor (that is, the Promoter of the Faith) concedes” (*Act. Doct. animad.*, § 25, Resp. n. 239).

But this is not the place to dwell longer on the question of fact. It is better to approach the question of right, and to demonstrate that the rules handed down by St. Alphonsus concerning the manner of resolving practical doubt are true.

The Moral System of the Holy Doctor Alphonsus

St. Thomas, *Quodl.* VIII, q. 6, a. 13; St. Alphonsus, I, n. 54; ed. G., I, p. 25; *Monitum* from ed. 7; little work *Dichiaraz.*, etc.; *Vind. Alph.* (ed. 2); Gaude, *de mor. system. S. Alph.*; De Caigny, Apologetic Dissertation; Wouters, *de Minusprobab.* (ed. 2); Ter Haar, *de syst. mor. antiq. Probab.*; the history of Innocent XI’s decree on Probabilism; Ballerini, *op. mor.*, ed. 2; Arendt, *Crisis*; Bouquillon, *Theol. mor. fund.*, ed. 3; Sweens, *Theol. mor. fund.*; Beaudouin, *de Consc.*; Lehmkuhl, *Probab. vindicatus*. Besides these, the authors of moral theology, treatise on Conscience.

So that the system may be better understood, three things will be explained:

1. The exposition of the system;
2. The demonstration of the system;
3. The excellent merit of the system.

I. Exposition of the System

Two things are essential to this system: the method and the principles which it employs (*Vind. Alph.*, Apologetic Dissertation, n. 68).

88. A. The METHOD is expressed by the following rules:

1. Truth is to be sought with moral diligence, which is proportioned to the matter and to the gravity of the doubt (n. 40, rule 2).

2. Where truth cannot be found, a comparison of opinions must necessarily be instituted, and their value must be estimated not only absolutely, but also relatively (n. 67).
3. From the comparison and opposition of opinions one must see what sort of doubt arises, whether strict or broad. When opinions occur equally or almost equally probable, we are involved in strict doubt (n. 74). When one opinion is certainly more probable, or most probable, or uniquely probable, we are involved in broad doubt, with moral certitude broadly taken (n. 75, 77).
4. Once the nature of the doubt has been defined, the principles are immediately applied.
5. B. The PRINCIPLES on which St. Alphonsus's system rests are of a twofold kind, according to the twofold kind of doubt, strict or broad.

I. In STRICT doubt these two principles have force: A doubtful law does not oblige, and In doubt the condition of the possessor is better. From these principles flows this DOUBLE RULE: 1. In doubt concerning the existence (or extension) of a law or right, when there concur two opinions equally or almost equally probable, of which one stands for law, the other for liberty, it is lawful to follow the opinion favoring liberty; because in strict doubt concerning the existence of a law, liberty certainly possesses (n. 44, 55). 2. In doubt concerning the cessation of a law or right certainly previously existing, when there concur two equiprobable opinions or assertions of fact, the opinion or assertion which favors the law is to be held, because in strict doubt concerning the cessation of a law, the previously certain law possesses (ibid.).

II. In BROAD doubt the following principle comes in: In obscure things the more verisimilar is to be chosen. "Where truth cannot be clearly found," says St. Alphonsus (I, 54, 88), "we are bound to embrace at least that opinion which comes nearer to the truth." From this general principle flow two COROLLARIES: 1. A law that is only broadly doubtful, regularly speaking, obliges, because concerning it there is moral, and therefore sufficient, evidence. 2. Liberty or liberation that is only broadly doubtful, regularly speaking, truly de-obliges, because concerning it there is moral, and therefore sufficient, evidence.

90. It is also useful to note here that it is unlawful to use two probable opinions, or both parts of a doubt, at the same time in the same act, if one law is thereby certainly violated: for example, in a testament which, lacking legal form, is probably valid. Therefore it is not lawful, by following the former opinion, to enter upon the inheritance, and at the same time, by following the latter, not to pay the legacies contained in the same testament. For by such a manner of acting, the observance of one or the other law would necessarily be eluded, and the agent would contradict himself in the same act or business, which would be contrary to right reason (Reuter, n. 110).

II. Demonstration of the System

Concerning Rigorism and Laxism, as being condemned by the Church, it would be futile to dispute here. Therefore it remains to prove the system of St. Alphonsus against probabiliorists and absolute probabilists at the same time. In establishing the theses by which the Alphonsian system is constituted, we shall indicate all things according to the norm of those things which are reported in the Acts of the Doctorate.

Thesis I

In doubt concerning the existence of a law, when there concur opinions equally or almost equally probable, it is lawful to follow the opinion favoring liberty.

The sense of the proposition is evident. Cf. what we said n. 70 ff.

The thesis is against tutorists and probabiliorists. It can also be stated thus: It is lawful to follow an opinion equally or almost equally probable for liberty, with the opposite opinion for the law left aside. In strict doubt concerning the existence of a law, it is lawful to follow the opinion favoring liberty. It is lawful to follow the opinion for liberty, with the opinion for the law a little or doubtfully more probable left aside.

91. I. THE THESIS IS PROVED FROM THE AUTHORITY OF DOCTORS AND OF THE CHURCH.

1. Although the holy Fathers did not treat this question expressly, nevertheless they teach not obscurely that the safer part is not always to be followed in doubts.

Behold, for example, with what words St. Gregory Nazianzen (*Or.* 39, n. 18, 19) addresses a heretic who condemned second marriages: "By what argument do you confirm this? Either prove that the matter is so, or, if you cannot, do not condemn. But if the law is doubtful, let humanity and facility prevail." And St. Augustine (*Ep.* 54, c. 2, n. 2): "For what is not proved

to be contrary either to faith or to good morals is to be held indifferently.” Similarly St. Bernard (*Ep.* 77, c. 5, n. 18): “Certainly, there each one securely abounds in his own sense, where what is thought is opposed neither to certain reason nor to authority not to be despised.”

The testimonies of other Fathers can be read in St. Alphonsus (I, 60, 66; ed. G., I, p. 30, 36).

2. Disputations concerning probabilism began to be made toward the end of the sixteenth century; and from this time there were almost innumerable authors, and these most excellent, who pleaded the cause of this doctrine, at least in general, against anti-probabilists and probabiliorists.

Among these authors, as leaders, are to be reckoned Suarez, Vasquez, Lugo, Lessius, Sanchez, Palaus, Toletus, Laymann, the Salmanticenses, Amort, Bonacina, Sylvius, Croix, Roncaglia, Elbel (Diss. 1757, n. III).

3. The same is evident both from the practice of the Supreme Pontiffs, for example concerning certain doubtful impediments of matrimony (cf. I, n. 78; Diss. 1755, n. II), and from diverse responses of the Holy Office and of the Sacred Penitentiary, approved by Pius VIII and Gregory XVI, concerning loans.

For while it was being sharply disputed among theologians whether an increase could lawfully be received by force of the title of civil law, the Church, while this invincible doubt stood, handed down this practically safe rule, namely: “that penitents receiving profit from a loan according to the legal rate are not to be disturbed, provided they are ready to obey the Holy See when it shall have definitively defined.”

4. There is added the approval of the works of St. Alphonsus issued by the Holy See, by which it is especially evident that a professor of sacred Theology can lawfully follow in all things and publicly hand down the doctrine of the Blessed Doctor, notwithstanding an oath which he may have emitted of retaining the doctrine of a University which would follow probabiliorism and the opinions of probabiliorists (see the text at the end of the Preface).

5. II. THE THESIS IS PROVED FROM REASON, namely: 1. from the nature of law, 2. from the nature of liberty.

PROOF 1. From the nature of LAW, because from the right notion of law there is drawn this first fundamental principle: A doubtful law does not oblige.

ARGUMENTATION. A law insufficiently promulgated does not oblige. But a doubtful law is insufficiently promulgated. Therefore it does not oblige.

The MAJOR is evident both from the unanimous consent of theologians and from reason, because law is the measure according to which our life ought to be regulated, and it is the bond of our liberty, from which it follows that it must be applied to liberty through sufficient knowledge.

1. Law is a measure, which the prince of theologians, St. Thomas, thus teaches: “Law is a certain rule and measure of acts, according to which someone is induced to acting or is withdrawn from acting” (1.2, q. 90, a. 1). “But a rule and measure is imposed by the fact that it is applied to those things which are ruled and measured. Hence, in order that law obtain the power of obliging (which is proper to law), it must be applied to men, who ought to be ruled according to it. But such application is made by the fact that it is brought to their knowledge by promulgation itself. Hence promulgation itself is necessary in order that law have its power” (I, 57). Therefore law before promulgation does not have the force of obliging. And the same must be said if the matter concerns natural law: for God promulgates this through the light of reason implanted in each man, as St. Thomas asserts (1.2, q. 90, a. 4, ad 1).
2. Law is a bond. “For law is said from binding, because it obliges to acting” (1.2, q. 90, a. 1). Now, law touches and binds man only through knowledge. “For just as for binding some thing it is necessary that a cord actually be applied; so, for binding the will of man, so that he may exercise some action, or be bound to omit it, it is necessary that he himself have knowledge of the precept; otherwise that man remains in his liberty” (I, 59). St. Thomas teaches the same (*de Verit.*, q. 17, a. 3), saying: “No one is bound by any precept except through knowledge of that precept.”⁵⁵ Therefore the major is clearly evident: A law insufficiently promulgated does not oblige (I, 57-59).

PROOF OF THE MINOR. But a doubtful law is insufficiently promulgated. A strictly doubtful law (with which alone we are here concerned) is invincibly unknown. Therefore it is insufficiently promulgated.

⁵⁵ As is clear from the context, by the words “of knowledge” the Angelic Doctor does not understand certain and evident cognition. There the matter is of mere knowledge of the law, of the promulgation of the law, which suffices for the direction of the will, for example when there is opinative cognition concerning the law (see the same question, a. 2, ad 2). Bouquillon himself (*Theol. mor. fund.*, p. 560, note) acknowledges: “It seems certain to us that those words cannot be understood, nor were understood by the Angelic Doctor, in a probabilistic sense.”

Proof of the antecedent. Those things are invincibly unknown concerning which there is not a sufficient foundation, so that they can be affirmed rather than denied. But this obtains in the case where the matter concerns a strictly doubtful law, since only this is known, that a question is being agitated concerning the existence of the law; but concerning the solution of the question itself, there is no greater reason for affirming than for denying. Therefore. Hence all agree in asserting that law, in order that it oblige, ought to be certain and manifest, and ought to be manifested or become known as certain to the man to whom it is promulgated (I, 58, 63, 71, 72, 76). “Law, therefore, in order that it oblige, whether it be human or divine, must always be sufficiently promulgated or known, or proposed, or implanted (say it as you prefer), as certain” (Diss. 1757, n. 26). Recall what was said n. 46.

The same proof, in few words, in another place St. Alphonsus completes thus: “A law not sufficiently promulgated does not oblige. A doubtful law is not sufficiently promulgated (because while the law is doubtful, the doubt or question is sufficiently promulgated, but the law is not promulgated); therefore a doubtful law does not oblige. He who would wish to deny this argument would have to prove either that a law not even promulgated obliges, or that a doubtful law is truly promulgated, contrary to that which St. Thomas expressly teaches, and others commonly, as we have seen; but he will never prove either of these propositions forever” (I, 58).

93. PROOF 2. From the nature of LIBERTY. There is the fundamental principle: In doubt the condition of the possessor is better, or: In doubt the possessor prevails. But here we are involved in doubt, and liberty possesses. Therefore liberty prevails.

Proof of the major. The principle itself states the universal principle of equity, which the most learned Suarez expresses thus (*Vot.*, l. 4, c. 5, n. 8): “On account of doubt alone, things are not to be changed from the ancient state in which they existed in good faith; because, since in doubt there is a certain equality on each side, there is no reason why it should oblige toward one part rather than toward the other.” Therefore until certain reasons persuade this, no one is to be despoiled of the certain right which he enjoyed.

This principle of possession (as we said n. 44) was always admitted, in the matter of justice, in all tribunals, both civil and ecclesiastical.

Its extension to the matter of the other virtues was indeed attacked by some (cf. *Vind. Alph.*, Apologetic Dissertation, n. 114 ff.); but “the most common opinion is,” says our Holy Doctor, “that not only in the matter of justice, but also in every other matter, the right of possession prevails. The reason is: 1. Because the same motive of reason which runs for the matter of justice also runs for the other virtues; for just as in the matter of justice the condition of the possessor is better, because this condition of possession furnishes to the possessor a special right to retain the thing until it is evident to him that it is another’s, so it must be said in other matters. For when someone, after diligence has been applied, could not find the truth, he now perseveres in possession of his liberty, and therefore has a certain right to it, by which he is judged deprived by no doubtful right. 2. Because, as Sanchez says, possession is a universal title for all virtues. For since the essence of justice is to render to each his right, this belongs to every virtue, according as religion renders his right to God, charity to the neighbor, temperance to oneself, and so concerning the others; and therefore it is rightly said that the notion of justice is the potential or generic part of all the virtues, in which the other virtues agree among themselves” (Diss. 1757, in ed. 3 and 4 of the *Theol. mor.*, n. 19, 20).

Proof of the minor. Here we are involved in doubt, and liberty possesses. The first part, here we are involved in doubt, is evident from what was said n. 74. Proof of the other part: liberty possesses. This is clear from the very concept of law, which, since it is the bond of liberty, cannot even logically be conceived unless liberty is first posited. “Certainly man is born subject to God, and universally dependent on his will; but truly, just as a servant is not bound to carry out the wishes of his master unless they are made known to him, so man is not bound to carry out the particular wishes of God unless they are manifested to him by precept or prohibition” (*Dichiar.*, 1774, n. 42)... “Hence Scripture says (Ecclus. 15:14): God from the beginning constituted man, and left him in the hand of his own counsel. He added his commandments and precepts: if you will to keep the commandments, they will preserve you. Therefore first the Lord created man free, giving him liberty from his good pleasure, according to that which the Apostle writes (1 Cor. 7:37): Having power over his own will; and afterward he added and imposed the commandments which man was bound to keep; and therefore man’s liberty, since it is certain and possesses before the obligation of law, is bound only by a certain law” (I, 75).⁵⁶ This is confirmed

⁵⁶Let the prudent reader note that from the same universal disposition of the supreme Legislator there arise both the right of liberty and the efficacy of a particular law. Both are for the good, and law, as law, is not contrary to us. He certainly does violence to the aforesaid texts of Sacred Scripture (from which it is affirmed that liberty pre-exists the particular law) who concludes from these that such firm and ample rights are present in liberty that it ought to yield place only before an evident law. He composes all things better who, walking the middle way with St. Alphonsus, attributes to pre-existing liberty that firmness of rights which pre-existing law possesses. Just as pre-existing law must be fulfilled as long as it morally endures, so also account must be taken of liberty as long as the law has not sufficiently become known to it.

by St. Thomas, who says with the common opinion: That is called lawful which is prohibited by no law (on 4, D. 15, q. 2, a. 4, ad 2).

Let us conclude this universal thesis with these words of St. Alphonsus (I, 68): “1. Considering the equal weight of each opinion, man would remain doubtful, and could not act; 2. but considering the force of the law, since in that case it has not been sufficiently promulgated, it does not oblige nor bind: and therefore 3. man, as not bound by a doubtful law of this kind, is rendered certain of his (moral) liberty, and thus he can act.”

Objections Are Solved

94. OBJ. 1. In doubts the condition of the possessor is better. But according to the probabiliorists, the eternal law possesses before liberty. Therefore in the concurrence of two opinions which generate doubt, the opinion which stands for law must always be preferred.

Resp. Distinguish the minor. The eternal law precedes liberty by priority of time or duration, I concede; by priority of order, whether ontological or logical, I deny. In the ontological order there is simultaneity, as between two correlatives; in the logical order, liberty is prior, “by priority of reason or nature,” as St. Alphonsus says. For how could man be bound before he exists, or before he knows the bond of the law? Therefore the eternal law, although in itself it has always had and has the force of obliging in first act, nevertheless actually and in second act it does not bind man except when it is actually promulgated to him through the light of reason (I, n. 70, 75; ed. G., I, p. 50).

INST. The rule is prior to the thing ruled. But law is as it were the rule, and liberty as it were the thing ruled. Therefore law is prior to liberty.

Resp. Distinguish the major. If the matter concerns rule insofar as it is an exemplary cause in relation to the effect, I concede; if the matter concerns rule insofar as it is a norm to be applied in the use of some thing, I deny. The use of a thing to be moderated according to rule cannot even be conceived unless the thing itself is presupposed.

OBJ. 2. No law is doubtful: for all laws, whether divine or human, certainly exist and are certainly promulgated; the only doubt is whether such a particular case is comprehended in the general law, for example in the Decalogue; therefore law always possesses against liberty.

Resp. St. Alphonsus: “In the case of two opinions of equal weight, although the general law is certain as to existence and is sufficiently promulgated, nevertheless with respect to that case it is doubtful both as to existence and as to promulgation; and therefore then, because it is doubtful whether the law is extended to that case, it is certain that it is not extended as to obligation. This indeed St. Thomas recognized when he said that law is like a bond, which, until it is applied to someone through contact, allows him the power of turning wherever he wishes” (I, 62, 72; H. Ap., I, 67, 68).

OBJ. 3. In canon law this rule is handed down: “In doubt the safer way is to be chosen.” Therefore it is not lawful to embrace the less safe part.

Resp. 1. The aforesaid rule has force in practical doubt (cf. n. 54), which someone does not wish or cannot lay aside; it has force especially in doubts of fact, where there is danger of an evil absolutely to be avoided. And our Holy Doctor clearly proves that the doubts to which the Supreme Pontiffs applied the aforesaid rule were of this kind (I, 77, 78).

2. If the matter is to be judged from the rules of law, neither is this support lacking to our opinion, since these things are had in law: “In doubt, favors are to be enlarged, odious things restricted. In obscure things the minimum is to be followed.” And: “Unless you shall have been certain concerning the mandate, you will not be compelled to execute what is commanded.”

OBJ. 4. He who exposes himself to the danger of sinning sins, as Sacred Scripture testifies: He who loves danger will perish in it (Ecclus. 3:27). But probabilists, or equiprobabilists, by following a probable, less safe opinion, expose themselves to such danger. Therefore.

Resp. 1. Retort the argument. If, on account of any danger whatever of sinning, it were unlawful to use a probable opinion, it would also be unlawful to use a more probable one, indeed even a most probable one; for, since neither opinion goes out from the limits of probability, neither excludes fear of erring. Therefore absolute tutorism, condemned by the Church, would necessarily have to be embraced (*Dich. del sist.*, 1774, n. 51).

2. Distinguish the major. He sins who exposes himself to the danger of sinning formally, I concede; he sins who exposes himself to the danger of sinning materially only, I deny.

To the minor: Probabilists expose themselves to the danger of sinning materially only, let it pass; to the danger of sinning formally, I deny. The danger of sinning formally cannot arise except from a certain law: For where there is no law, neither is there transgression (Rom. 4:15). But a probable opinion, to which another also probable opinion is opposed, does not constitute a certain law. Therefore the danger of sinning formally exists only in the mind of those who, contrary to the dictate of reason, affirm that a doubtful law is equivalent to a certain law.

OBJ. 5. The thesis admits the danger of transgressing, at least materially, the divine law, since that danger cannot be separated from the probable existence of the law. But it is unlawful to undergo such danger; because it brings into jeopardy the conformity of the human will with the divine will, and the end intended by God the supreme Legislator; each of which must absolutely be procured. Therefore the thesis is to be rejected.

Resp. I concede the major; distinguish the minor. The danger of material transgression cannot be admitted when the danger arises from the temerity of the one acting, who contemns practical doubt and does not apply due or proportionate diligence for obtaining the truth, I concede; when the danger arises from invincible ignorance, namely from the fact that, after diligence has been applied, the truth could not be found, I deny. In circumstances of this kind God permits such danger to be incurred, for universal reasons, as will soon be seen. Hence "it is certain that material sin invincibly unknown is not imputed to fault" (Diss. 1757, n. 37).

To the reason alleged, distinguish. The conformity of the human will with the divine will is brought into jeopardy as to those things in which man is not bound to conform himself to the divine will, I concede; as to those things in which he is bound, I deny (I, 76; *Istr. e Prat.*, I, n. 46). For man is not always bound to will what God wills, as St. Thomas teaches, saying (1.2, q. 19, a. 10, ad 1): "In particular, we do not know what God wills, and as to this we are not bound to conform our will to the divine will." Therefore, unless the divine precepts are manifest, man is not bound to conform himself to the divine will. Gonet also declares this in these words: "Man is not bound to conform himself to the divine will in the material thing willed, except when the divine will is manifested to us by precept or prohibition" (*Clyp.*, disp. 6, a. 2, n. 37).

Nor is the end intended by God the supreme legislator frustrated. That end, which is the glory of God and the salvation of souls, is had in the perfect obedience which men render to God. But the danger of material transgression by no means removes this perfect obedience. Thus man, not even in this case (as we just said), omits to will that which God wills him to will; in which thing his full obedience toward God is contained.

For the rest, what prudent man can deny that it is too onerous to be bound by laws even doubtful, and that an obligation of that sort is unequal to human powers, and therefore redounds to the detriment of the glory of God himself? "I hold as certain," says St. Alphonsus (*dell'Uso moder.*, 1765, c. 4, n. 35), "that in so great a variety of innumerable doubts which can arise in the human mind, on account of the darkness with which nature has been enveloped from original sin, God did not will to oblige man to observe even uncertain laws, of which there would exist as many as there are doubts which can occur concerning laws."

95. Note. This last reason, by way of a universal epikeia, and therefore of itself and in a uniform manner, excuses man from the transgression of doubtful laws, and removes a priori their obligation, as long as there shall not have been evidence concerning the will of the legislator. Nor therefore, in a particular case, are we bound to seek a special excuse. But this has force especially with respect to laws which by the common judgment of doctors are reputed doubtful. For St. Alphonsus observes, saying (Diss. 1757, n. 24): "A law which is disputed among the wise cannot even be said to have been intimated to the community, since the community itself, split into diverse parts, still seeks, and does not find, that a law has been given." Concerning a law of this kind, commonly and as it were juridically unknown, the axiom certainly has force: A doubtful law is no law (at least in second act), and therefore its transgression can scarcely retain the name of material sin. Quite otherwise must be said if a law intimated to the community of men is unknown, or reputed doubtful, by someone in particular; for this is per accidens, and the agent then is excused only individually, on account of his conscience invincibly erroneous (cf. I, 173).

Thesis II

In doubt concerning the cessation of a certain law, when there concur arguments equally or almost equally probable, the opinion which favors the law is to be followed.

The thesis is against certain probabilists who contend that, in every doubt, whether negative or positive on both sides, it is lawful to follow the parts of liberty, whether the matter concerns the beginning of the law or the cessation of the law.

The thesis can also be stated thus: In strict doubt concerning the cessation or fulfillment of a law, the law is to be observed.

The law continues to oblige whenever it is equally or almost equally probable that it has ceased or has been fulfilled.⁵⁷

96. The thesis is proved 1. From the part of LAW. The rights of liberty and of law ought, when their cause is equal, to be held equal. Therefore just as liberty possesses when the law is not certain, so on the contrary law ought to possess until there is evidence of revocation (cessation). Cf. n. 44 and 91; D'Annibale, I, n. 264, 266.

Proof 2. From the part of LIBERTY. For following the parts of liberty there is not given, in the case, sufficient certitude concerning the honesty of the action. Therefore. For the only foundation on which conscience could rest would be the principle: A doubtful law does not oblige, applied also to a law doubtfully ceasing. Now, as Berardi (I, 56) and the editor of the Ratisbon Compendium of Gury (n. 80) well note, "the aforesaid principle, even for the probabilists themselves, as to this sense, that is, in such a universal acceptance, is very doubtful, nor is it held as morally certain" (recall what was said above, n. 46).

97. It is confirmed from other most received PRINCIPLES OF LAW: 1. In doubt a fact is not presumed, but must be demonstrated (cf. n. 48). But the revocation of a law, desuetude, dispensation, an excusing or exempting cause, the fulfillment of a precept, etc., are facts, which are by no means proved by merely equiprobable reasons (IV, 174). Therefore. 2. Proof lies on the plaintiff, or: Proof lies on him who affirms, not on him who denies (cf. n. 49). Now, where law, through certain promulgation, is found in possession of its right, if afterward, circumstances having changed, doubt arises, and liberty asks to be loosed by this law, liberty certainly assumes the place of plaintiff and affirmant. Therefore the burden lies on it to prove, by reasons sufficiently convincing, that there truly has intervened that cessation of the law and change of right which it contends. 3. In doubts one must stand for that part for which presumption stands (n. 47). Now, in doubt whether a law certainly established and certainly promulgated has ceased, presumption stands for law, not for liberty. For presumption stands for that part which is not bound to prove. But in the aforesaid doubt, proof certainly lies not on the law, which was proved, but on liberty, which demands for itself liberation from the bond of law. Therefore (cf. n. 129, 173).

Nor should it be said that these axioms of law have force indeed in doubt, but not in probable opinion. For this distinction could be admitted if the probable opinion, or probability of fact, were unique and expedient, as we have said several times with St. Alphonsus. But it is otherwise if, on each side, as the thesis bears, equal opinions or probabilities concur; for it is not lawful to adhere to one opinion or probability, with the other spurned or not considered; and therefore then we are involved not in opinion or probability, but in strict and true doubt, in which the aforesaid axioms have their whole force (cf. n. 74).

Note. The principle of possession, far from proceeding in negative doubts alone, as many probabilists teach, has force especially for positive doubts, as is evident from its own terms: In an equal cause, etc. Equality of cause denotes equal probability, rather than an equal defect of motives. But the primary principle of the probabilists, he who acts probably acts prudently, stood in the way of their applying the principle of possession to positive doubts, as can be seen everywhere among them.

98. For the rest, concerning the extension of the present thesis, the following things are to be noted:

99. In doubt, or in equiprobability, liberty possesses much more frequently than law, so that the principle of possession favors liberty much more than law.

And indeed, as is evident to all: 1. neither natural laws once known (which must be well noted), nor positive divine laws, after the promulgation of the Gospel, whether by abrogation, or derogation, or dispensation properly so called, will ever cease. 2. As regards human laws, which can cease by the aforesaid ways from the will of the legislator, even these do not remain doubtful for much time. For by law it has been provided that after a certain interval of time, the cessation of the law, or desuetude, be held as prescribed (cf. n. 265). Therefore the principle of possession, in practice, rarely binds one doubting, if particular cases are excepted: for example, whether someone has satisfied the law; whether there is a sufficient cause so that someone may be exempted from a law by which he certainly was bound. But these cases, however frequent, manifestly become rarer if they are compared with those in which liberty possesses.

2. If the matter concerns probable satisfaction of the law, there are several principles by which the doubt of fact is indirectly solved and liberty can often be helped (*Linz. Q. Schr.*, 1883, p. 573).

⁵⁷The Holy Doctor, reforming himself, establishes this thesis in express words, and applies it to the principal practical cases (I, 26 ff.). Therefore a few texts which are still found in the work (for example I, 99 at the end) are undoubtedly to be corrected. Others, which need explanation (III, 112, q. 3; III, 290), will be easily understood after comparison has been instituted with the reformed norms. Cf. Gaude, *de mor. syst. S. Alph.*, p. 100 ff., where there are more things.

The first is: That which regularly, that which ordinarily happens, is judged to have been done (see what was said n. 50). The other: In doubt one must stand for the value of the act (n. 51). The third: A positive precept does not oblige with grave inconvenience. Here it is useful to note: if sometimes by force of this principle you are freed from fulfilling the precept itself, a fortiori you will be able to be freed from repeating an action which you have already probably placed for fulfilling the law; otherwise the way would be opened to scruples. The fourth: In a conflict of laws, the higher law is to be preferred to the lower. Hence, in invincible doubt whether the recitation of the Office, or the hearing of Mass, is going to harm health, you are held to nothing, because the law or right of preserving health prevails (III, 335, 1036; IV, 154).

Objections Are Solved

99. OBJ. 1. From that principle, An obligation is not to be imposed unless there is certain evidence concerning it, a twofold conclusion is deduced: 1. Whenever law has not proved its existence, it is nothing for the human will, and thus every doubtful law is a null law. 2. Whenever law ceases to prove its existence, it too ceases for the human will, and thus every law which, once certain, has become doubtful by the lapse of time, loses the force of obliging and is to be held as nothing. Thus Gury, I, n. 79 (ed. 16).

Resp. 1. Retort the conclusion. Therefore similarly liberty, whenever it ceases to prove its existence, ceases to exist; therefore a Superior, whenever he ceases to prove his right, ceases to possess his right; therefore whenever someone ceases to prove his innocence, his innocence ceases to exist. These consequences are certainly false; therefore the antecedent also is false.

2. I deny the parity. For positive law (concerning which alone the matter is here), once promulgated and known, obliges, and continues to oblige as long as its cessation has not been proved: for it is of the nature of law that it remain (H. Ap., app. 3, n. 74; IV, 174). Hence the argument is to be made thus. Whenever the existence of law is not proved, it is nothing for conscience. Therefore, by parity, whenever the cessation of a certain law is not proved, there is no cessation for conscience. For just as obligation depends on certain knowledge of the law, so de-obligation depends on certain knowledge of de-obligation.

INST. No one is bound by any precept except through knowledge of that precept. But concerning a law doubtfully ceasing there is no knowledge. Therefore.

Resp. Distinguish the major. That is, no one is bound by any precept unless he knows himself to be held, whether directly or indirectly, I concede; unless there is evidence of a direct obligation, I deny. All theologians teach that an indirect obligation must be admitted. But truly, in the case, there is very good evidence of an indirect obligation, as is clear from the proof of the thesis. Therefore there is present the knowledge required for the obligation of the law.

OBJ. 2. An obligation which has probably been satisfied is no longer a certain obligation; therefore it is doubtful; therefore null.

Resp. Distinguish the major. If the law has been probably satisfied in such a way that it is quasi morally certain (either because all conjectures are in favor of liberty, and none to the contrary, or because the reasons for liberty are notably more probable), I concede; if conjectures are had in each part so that it is probable that you have satisfied, and equally probable that you have not satisfied, I subdistinguish: it is no longer a certain obligation directly, I concede; indirectly, I deny.

Hence St. Alphonsus (2 *El. qq. ref.*, n. 1): "If someone probably judges that he has fulfilled a vow, the Canonical Hours, or a penance, whether he is now bound to satisfy if it is still probable or doubtful that he has not fulfilled? Several authors deny; but the opposite must be held, because the obligation already contracted possesses, until it shall certainly have been fulfilled." Cf. *Conf. dir.*, I, 12; V, 9; XV, 17.

N. B. St. Alphonsus sometimes distinguishes doubt from probability, and says that in doubt concerning the cessation of a law the law is to be observed; but otherwise, if a probable opinion is present. Book III, 112, q. 3, Second opinion; *ibid.*, 290, word *Notandum*.

This ambiguity vanishes if one attends to the fact that the Holy Doctor understands in the former case strict doubt, namely when there are two opinions almost equally probable; but in the latter case a uniquely probable opinion, as is plain from the context, and from book I, 67 at the end, and 71, likewise book III, 562.

OBJ. 3. No small difficulty arises from the application of the principle which is commonly called the principle of possession. For in many questions it does not immediately appear whether law possesses or liberty.

Resp. This difficulty can by no means bring it about that the principle itself is not legitimate. For it is proper to a moral matter that it involve many obscurities and difficulties. Nevertheless, in the present case the difficulty is not so great as is proclaimed. St. Alphonsus establishes on this matter the following general rule: "Presumption or possession stands for that part which is not bound itself to prove the fact, but transfers the burden of proving it to the other" (cf. n. 47). Now, the application of this rule, in most cases, is easy, since it is enough to ask whether my liberty, as to this case, has already been bound or not. If it has not yet been certainly bound, liberty itself possesses, and it belongs to the law (that is, to reason acting the part of the law) to prove its existence, or promulgation. But if liberty has certainly been bound, the law (or legislator) possesses, in which case the burden lies on me of proving my liberation. But if finally the matter, all things having been weighed, remains obscure, let benignity and charity prevail; for where law doubtfully possesses, liberty certainly possesses.

Thesis III

In the concurrence of an opinion certainly more probable for the law, it is not lawful to follow a less probable one for liberty.

The thesis is against those probabilists who patronize liberty too much. It can also be stated thus: It is not lawful to follow an opinion for liberty if the opposite for the law is certainly or notably more probable. In the state of one opining concerning the existence of a law, the law is to be observed. It is not lawful to follow an opinion known certainly to be less probable.

The SENSE OF THE THESIS, after those things which we have said (n. 70; 73, note; 75), is sufficiently clear. Therefore an opinion certainly more probable is that which, without any hesitation, we recognize as more probable. For this a notable excess is required, that is, a grave one, but a most grave excess is not required. Finally, in order that an opinion be certainly more probable, it is not necessary that it be held so commonly by doctors, but it suffices that someone, after a proportionate weighing of the arguments, holds it, by subjective judgment, to be certainly more probable.⁵⁸ Ballerini, Arendt, Bucceroni, and others err, who twist the words of the Holy Doctor into another sense.

100. I. THE THESIS IS PROVED FROM AUTHORITY.

1. From undoubted documents it is evident that the Holy See, from the seventeenth century onward, gave the favor of its authority to the more probable opinion for the law.
 - a) Alexander VII by his exhortation brought it about that the Order of Dominicans, in the year 1656, declared war against the less probable opinion.
 - b) Innocent XI, as prefect of the Holy Office, by a decree of June 26, 1680, "commanded the Most Reverend Father Thyrsus Gonzalez, S.J., that he freely and intrepidly preach, teach, and defend by the pen the more probable opinion, and also manfully impugn the opinion of those who assert that, in the concurrence of a less probable opinion with a more probable one so known and judged, it is lawful to follow the less probable."
 - c) Clement XI, in the year 1702, signified to the Superior General of the Society of Jesus that "the Superiors of the Society would do a thing most pleasing to His Holiness if they see to it that the Jesuits abstain from teaching and defending the opinion which asserts that the use of a less probable and less safe opinion is lawful." Cf. as to these and other very useful documents: Ter Haar, *Innocentii XI de Probabilismi decreti Historia et Vindiciae*; Wouters, *de Minusprobabilismo* (2nd ed., p. 21 ff.); Mandonnet, *Revue Thomiste*, 1902; Jansen, *Geschichte u. Kritik in Dienste der Minusprobab.*; Patuzzi, *Lett.*, VI, p. 21.
 - d) Finally, the Holy See always praised with great encomia the moral doctrine of St. Alphonsus. Cf. above, beginning. Who does not see that those encomia support the whole moral system of the Holy Doctor?
2. Our thesis agrees with the rule most received in Canon Law: We look in obscure things to what is more verisimilar (Rule 45, in 6). Now what is more verisimilar is the same as what is more probable. Each forum ought to agree, insofar as this can be done, says D'Annibale (I, 264), after De Lugo and others. As Father Schmitt (*Gesch. des Probab.*) concedes, this rule was commonly used before Medina.
3. St. Thomas favors our thesis. For from the fact that he affirms these two things: a) that probable certitude directs what is right in human acts (cf. n. 37); b) that doubt then occurs when equal reasons are given on each side, as we also noted above (n. 74), the Angelic Doctor laid the foundations of our opinion.

⁵⁸So that it may be better evident what St. Alphonsus intended, it is useful to note the following testimonies (see many others in *Vind. Alph.*, Wouters, Gaude):

See above, n. 92, in what sense the words of St. Thomas are to be understood: “No one is bound by any precept except through knowledge of that precept.”

4. Many theologians from the last six centuries support our thesis. Hence it, just like the first (n. 91), does not lack that excellence which comes to some opinion from the weight and multitude of testimonies.
- a) It escapes no one that from the thirteenth century up to the end of the sixteenth century authors almost commonly taught: the more probable opinion is practically to be followed. Corduba is witness (*Quaest. mor.*, l. 2, q. 3), who wrote a little before Medina; the old probabilists are also witnesses.

Then, when the controversy concerning probabilism had arisen, there were not lacking doctors, and those very grave, indeed also theologians of entire Universities (for example, of Paris and Louvain), who proscribed the use of an opinion less probable and known as such.

They certainly erred by rejecting the use even of an equiprobable opinion; but they did not err wholly. Cf. Ter Haar, *Innocentii XI de Probab. decr. Hist.*, p. 35.

- b) Among theologians who opposed probabiliorism, very many teach that, in a conflict of opinions, the certainly or notably more probable one is to be followed. Before the rest let Suarez be heard (*de Leg.*, l. 8, c. 3, n. 19): “Greater probability is a certain moral certitude, if the excess of probability is certain.” Muzzarelli says the same (*Reg. mor. op.*, in Migne, *Curs. theol.*, XI, 1309), whom it is pleasing to cite as being especially alien to party zeal: “Some excess of reasons for one part against the other, unless it is notable, does not remove doubt. But when it has been notable, the gravity now preponderates for one part, it is now determined to one, and in that we stand.” The same teach Ferdinand Rebellus, S.J.; Antonius Perez, O.S.B.; Martinus a Prado, O.P.; Franciscus de Arauxo, O.P.; Antonius Cotonius, O.M.; Passerini de Sextula, O.P.; Esparza, S.J.; Terillus, S.J.; Gabriel Daniel, S.J.; Christ. Rassler, S.J.; Benedict Schmier, O.S.B.; Ant. Mayr, S.J.; Eusebius Amort; Jos. Biner, S.J.; and several others. Cf. Ter Haar, *de syst. mor. antiq. Probab.*, where there are more things.
- c) To these finally acceded St. Alphonsus, who in the nineteenth century drew not a few theologians to his system. Cf. n. 86, 3. In the year 1878, the distinguished Ernest Muller wrote: “Equiprobabilism is today taught almost everywhere in the schools” (*Theol. mor.*, I, 278, 3).

101. II. IT IS PROVED FROM REASON.

102. From the part of LAW, which is sufficiently promulgated.

For: law is sufficiently promulgated when concerning it there is had that moral certitude which is called broad certitude. But the law which an opinion certainly more probable favors is certain by broad moral certitude. Therefore.

Proof of the major. 1. That certitude which suffices so that it is lawful for man to follow the parts of liberty (see n. 37), certainly also suffices so that he is bound to follow the parts of law: for the same reason applies to contraries; and both natural equity and common sense itself demand that the rights of law and liberty, in an equal cause, be held equal: for each right is of itself equally holy, as being most wisely ordered and willed by the eternal law. Cf. *Ami du Cl.*, 1900, p. 484. 2. Certitude of this kind corresponds to the nature of a moral thing, since in many cases a greater cannot be had. But if it were not sufficient for imposing an obligation, very many laws would be ineffective with respect to very many persons, and the discipline of morals would be excessively loosened (Muller, P. I, § 81, n. 10; cf. Bonacina, *de Leg.*, D. I, q. 1, p. 7, n. 11).

Proof of the minor. “The law which an opinion certainly more probable favors,” etc. This certitude indeed is had when the reasons favoring one opinion so draw to themselves the assent of the intellect that the reasons favoring the other opinion are able to introduce no longer strict doubt, but only some prudent hesitation, or broad doubt. But this obtains for an opinion certainly more probable. Therefore.

For the force and efficacy of the reasons on which the less probable opinion rests is certainly overcome, and in order to prudent assent elided, by the stronger reasons of the opposite opinion, which alone for that reason perseveres as expeditely probable for practice; and although there remains a certain fear of the other part, the intellect can no longer deny assent to it, unless it dismisses at the same time the rules of prudence and logic (I, 67, 88). To the point Laymann says thus (*Consc.*, c. 5, n. 5): “When, I say, one part of a contradiction appears more verisimilar than the opposite part, the intellect cannot dissent from that and assent to this; because this would be done without reason, indeed against reason.” The same teach Esparza, Vasquez, Suarez, Lessius (in Ter Haar, *de syst. mor. antiq. Probab.*, p. 89), Beaudouin (p. 97, 127), Farges, Storchenau, and others. See also what was said n. 75. In this controversy concerning probabilism, whatever Noldin may teach (I, n. 244, 2), attention must be paid not only to the rules of Logic but also, and first of all, to the norms which Ethics hands down. Cf. Koch, *Moralth.*, § 36, 4, 5.

Those things which we said (n. 30 and 31) show more than sufficiently that our argument expresses the mind of St. Thomas. For in moral matter (I *Eth.*, lect. 3) our norm is coarse certitude (that is, rude and imperfect), namely that which arises from verisimilitude, from those things which occur more frequently.

Moreover, that law is sufficiently promulgated and certain if unique probability stands for it is handed down everywhere by the gravest theologians with St. Alphonsus (cf. n. 76) and with Suarez, who teaches: “When a man probably judges one part and concerning the other does not have a probable judgment, ... then there is no doubt that the man can or must follow such a judgment” (*de Poenit.*, disp. 22, s. 9, n. 5; likewise *de Voto*, l. 4, c. 5, n. 5; *de Legibus*, l. 5, c. 18, n. 19). But the state of mind is the same if an opinion is uniquely probable as if it is certainly more probable; for on account of this certain and notable excess above the reasons equal on each side, there is present for the law a simply grave motive, which is able to draw the assent of a prudent man, although with fear of the opposite; whence the mind is no longer involved in the state of strict doubt or suspicion, but in the state of one opining or of certitude broadly so called.

2. From the part of LIBERTY, which cannot prudently choose the certainly less probable opinion.

For acting prudently, moral certitude, at least broad, concerning the honesty of the action is required (cf. n. 36, 37, 40). But such certitude, for liberty, cannot be had with an opinion certainly less probable. Therefore.

Proof of the minor. “It cannot be had” either as direct or indirect certitude.

- a) Not direct. For an opinion certainly less probable cannot, as certainly less probable, move the mind to prudent assent. For it is against right reason, with rectitude in the will supposed, to adhere to an opinion which is judged to approach nearer to error than to truth.
 1. In the year 1765 he teaches these things: “It is certain that it is unlawful to follow a slightly probable opinion... The same must be said of a doubtfully probable opinion... Thus not even (according to our system) can we follow a much or certainly less probable opinion. The whole question is whether it is lawful to follow an equally or almost equally probable one.” And he responds: affirmatively. Cf. *Vind. Alph.*, I, p. 65 ff. Cf. *ibid.*, I, p. 55.
 2. In the same year he writes: “We do not defend the probable opinion in concurrence with the more probable, but we say that it is lawful to follow an equally probable one.” In the same little work the same words return three times. *Vind. Alph.*, I, p. 70.
 3. In the same year (*dell’Uso moder.*, c. 3, n. 81) he says: “So many times I have said that not only he who has evident knowledge of the law, but also he who, according to the light of reason, judges that the opinion standing for the law is notably or certainly more probable, is bound to observe it, even if there is dispute among doctors.” Cf. Wouters, p. 50.
 4. To Father Blasucci (1768): “When I know that the stricter opinion is more probable, I say that it must be followed; and in this I am opposed to the system of the Jesuits. When the strict opinion is certainly more probable to me (*presso me*), I must follow it.” *Lettere*, III, n. 217.
 5. In the year 1777 he writes: “I am not a rigorist, nor a probabilist. My opinion... is this: It is unlawful to follow an opinion favoring liberty, if an opinion of this kind rests on the sole foundation of probability. But the opinion for the law must necessarily be followed whenever it is more probable than the opposite. And hence it is why I again affirm that I am neither a rigorist nor a probabilist; but my system is such that I truly deserve to be called a probabiliorist.” *Lettere*, III, 315.
- b) Not indirect. Indirect certitude is obtained from undoubted reflex principles. But, in the present case, such principles are lacking. For the principles which are commonly invoked in favor of liberty: A doubtful law does not oblige; in doubt the condition of the possessor is better, obtain certain and firm value in strict doubt alone (cf. n. 32), as is evident from the preceding argument. Therefore.

On these things the following must be noted:

1. According to St. Thomas, “the whole matter of the moral virtues falls under one notion of prudence” (2.2, q. 65, a. 1, ad 3). The essential act of prudence is counsel (2.2, q. 47, a. 1; VI *Eth.*), through which prudence directs the election of the will (I *Eth.*, lect. 1). The matter about which prudence is concerned is practical truth, for it is “right reason concerning things to be done”; whence its norm is that certitude which judges concerning those things which happen for the most part; for prudence is in the opinative part of the soul (1.2, q. 57, a. 4, ad 2; 2.2, q. 49, a. 1; 2.2, q. 47, a. 3, ad 2; a. 9, ad 2). See what was said above n. 31.

2. Since the object of prudence is practical truth, the counsel of prudence necessarily supposes and seeks conformity to right appetite. "For in those things which are toward the end," says St. Thomas (1.2, q. 19, a. 3, ad 2), "the rectitude of (practical) reason consists in conformity to the appetite of the due end." Cf. 1.2, q. 57, a. 5, ad 3. From which it follows that he acts imprudently who, given an opinion certainly less probable against the law, nevertheless chooses it, because in his counsel and in his election he has not acted conformably to the appetite of the due end. The will, by liberty of exercise and specification, can indeed choose the less probable. But in the case, this election cannot be called that of a prudent man. Cf. Beaudouin, p. 128; *Ami du Cl.*, 1900, p. 483, where there are many useful and learned things.

St. Alphonsus sets forth our arguments in these words:

"When the opinion for the law is certainly and without any hesitation more probable, then that opinion cannot be anything except notably more probable. And in that case, the safer opinion will no longer be doubtful (understand this of doubt strictly taken...), but is morally or quasi morally certain; at least it can no longer be called strictly doubtful, since it has for itself a certain foundation that it is true. Whence then it happens that the less safe opinion, which lacks a certain foundation, remains either slightly or at least doubtfully probable with respect to the safer; and therefore it is not prudence, but imprudence (grave imprudence, as is read in the Dissertation of 1762), to will to follow it. For whenever it expressly appears to the intellect that truth stands much more for law than for liberty, then the will cannot prudently and without fault adhere to the less safe part; since, in that case, the man would operate not leaning on his own judgment or his own credulity, but rather through a certain effort which by his will he would inflict upon the intellect, so that it would be removed from the part which appears to him much more verisimilar, and would be bent to the part which does not appear true to him, indeed which seems not even to have a certain foundation by which it could be true." These things the Holy Doctor says in editions 6 and 7. There he unfolds more clearly and more fully what already in the year 1762, in the brief Dissertation, he had written (cf. *Vind. Alph.*, I, p. 51).

In the little work *Dichiaraz. del sist.*, n. 2 (1774), he argues more briefly:

"I again declare in this little work that I am not a probabilist, nor do I follow probabilism; indeed I reprove it... I say that if the opinion for the law appears certainly more probable, we are bound to follow it, for several reasons, of which the chief is this: In doubtful matters we ought to seek and follow truth. But where truth cannot be clearly found, we are bound at least to embrace that opinion which comes nearer to the truth; and so the truth itself, which obliges us to follow it, also obliges us to follow that opinion which stands for the law, when it comes nearer to that same truth." Thus also in the *Monitum* (1773) attached to the seventh edition, and in the last editions of the Moral Theology, n. 54 and 88. Cf. Muller, I, § 81, n. 9; Farges, *La liberte et le devoir*, VIII, p. 215 ff.

102. III. IT IS PROVED FROM THE DISADVANTAGES OF ABSOLUTE PROBABILISM.

Although Innocent XI by an authentic act gave favor to our thesis (cf. n. 100), nevertheless he never wished to mark with censure this proposition: "It is lawful to follow a less probable opinion which is truly probable" (in D'Annibale, I, n. 263, note 2). And indeed this proposition is very well explained in an equiprobabilistic sense, if the matter concerns an opinion a little less probable, and if a truly probable opinion is understood as it is defined by St. Alphonsus (cf. n. 75). Nevertheless, if it is explained in the sense of absolute probabilism, concerning an opinion certainly and notably less probable, this system of itself furnishes occasion to laxism. This can be proved both from the method which it uses in judging probability, and from the very principles on which it rests.

1. From the method. Those who follow absolute probabilism attend only to the probability of the benign opinion, and this absolute, and suspend judgment concerning the safer opinion. Very many probabilists teach this in set words; and what they teach is a consequence of the very doctrine which they defend. And indeed, if even the certain preponderance of the adverse opinion matters nothing, judgment concerning it can now be passed over, nor is there any reason why this opinion should be weighed. But "such a voluntary suspension of judgment" (these are the words of St. Alphonsus) "has annexed to itself a certain vincible, indeed affected, ignorance" (I, 65). Hence, not from a prudent weighing of opinions, but from voluntary ignorance of the opinion which favors the law, the probability of liberty is affirmed. Cf. *Istr. e prat.*, I, 53; *Vind. Alph.*, Apologetic Dissertation, n. 105, 106.
2. From the principles. The first principle of the probabilists, which implicitly underlies the diverse reflex principles which they bring forward, is this: He who acts probably acts prudently. Now this principle does not provide, by itself alone, a sufficient foundation for forming a certain conscience, since the probability alone of an opinion renders us in no way certain concerning the honesty of the action (cf. n. 36, 37). Indeed, he who relies on an equilibrated probability does not even act probably, but doubtfully and rashly, since amid equality of motives and arguments there is room only for doubt (I, 65, 97).

The other principle is: A law against which grave probability stands does not oblige, because it is uncertain. But this principle too labors under a defect. For not every probability fighting against the law, even if, from reasons considered in themselves, it seems grave, therefore renders the law doubtful; but only an opinion equally or almost equally probable, as was shown sufficiently and more than sufficiently (cf. above n. 67 and 75, end). “That opinion,” says St. Alphonsus, “which stands for liberty, when it enjoys equal probability with the opposite which stands for the law, introduces a grave doubt whether the law exists which prohibits the action” (I, 56).

But that the aforesaid method and the aforesaid principles of themselves furnish occasion to laxism will become not obscurely known to one seriously weighing the matter. For, since the method denies that the probability of the adverse opinion must necessarily be weighed, it can easily happen that solid probability is undeservedly adjudged to an opinion which favors liberty; and since, on the other hand, the principles of the system permit the use of a less probable opinion, who does not see that very many opinions, in themselves or at least with respect to their opposites only slightly or doubtfully probable, will be judged by many as truly probable and lawful in practice? That this can happen is to be judged all the more certain because each one easily assents to those things which please him. Therefore.

Hence the solicitude and complaints of Alexander VII, after that broad probabilism had especially prevailed; cf. n. 86, 5.

Nor less decisive is the judgment of St. Alphonsus: “The authors of the past century held this opinion (of absolute probabilism) almost commonly, but we say that it is lax, and cannot be lawfully embraced” (H. Ap., I, 31; *Apolog.*, 1769, n. 2).

Elsewhere the Holy Doctor has these things: “Deservedly many opinions of some ancient casuists have been condemned; I add, in my judgment, many still remain to be condemned” (*dell’Uso moderato*, c. 6, n. 16).

Note. Moderate probabilists (cf. n. 85, 4) have long since labored (and indeed not without fruit) so that they might meet these disadvantages. Yet there still remains, in our judgment, a hidden danger in their manner of proceeding, insofar as the principles which they use can of themselves lead the incautious to this conclusion: only a (truly) certain law binds the will. Cf. the words of the distinguished Noldin, I, n. 236, at the end. How much more securely do those act who follow to the exact rule those norms which St. Alphonsus finally established! For these norms (notwithstanding the decree concerning “nothing worthy of censure”) in the year 1807 were subjected to a new examination, when the *Positio* concerning the Prudence of our Saint was instituted: cf. Wouters, p. 49. See below, n. 107.

Objections Are Solved

103. OBJ. 1. There is no obligation unless there is certain evidence concerning it. But there is no evidence concerning an obligation against which true and solid probability fights. Therefore.

Resp. Distinguish the major. There is no obligation unless there is certain evidence concerning it, by certitude at least broad, I concede; unless there is certain evidence concerning it by strict certitude, I deny. Otherwise not even the most probable opinion fighting for the law would have the force of obliging, and consequently whenever some broad doubt concerning the law remained, the nullity of the law would always have to be pronounced: which would be intolerable laxism.

Likewise I distinguish the minor. If there is not given an opinion certainly more probable for the law, I concede; otherwise, I deny. Because from the natural precept of choosing the part which evidently comes nearer to the truth, the law certainly more probable already obliges, as being sufficiently promulgated.

OBJ. 2. He who follows a truly probable opinion acts with grave reason. Therefore he does not sin.

Resp. In the hypothesis, he acts with a grave reason, which is certainly overcome by a graver one. Hence he acts against right reason, as has been proved. For, as St. Thomas says: “Those morals are called good which agree with reason; but evil, which disagree from reason” (1.2, q. 100, a. 1).

INST. It is false that the lesser probability is elided by the greater, namely when both receive their force from diverse principles. But this almost always happens in the concurrence of opinions, as St. Alphonsus himself concedes (Diss. 1755, n. 13). Therefore.

Resp. Distinguish the major: if the discourse is concerning speculative elision, let it pass; if concerning practical elision, I subdistinguish with the same Holy Doctor (ibid., note): If the excess is not notable, I concede; otherwise, I deny. For even if the motives and principles of each opinion are disparate, and can, as such, preserve their intrinsic force, nevertheless the conclusions, that is, the opinions themselves, are not only disparate, but for the most part contradictory to each other, since one affirms the very thing which the other denies, that is, the lawfulness or unlawfulness of the act. Therefore when

one certainly surpasses the other, this latter is practically elided, that is, at least in order to forming conscience; in other words, it no longer provides a sufficient foundation so that we may act prudently (cf. n. 75 and 101).

OBJ. 3. The arguments of equiprobabilism for the use of the less safe opinion are the same as the arguments of simple probabilism, and logically lead to permitting a truly probable opinion, even if it is certainly less probable; because, namely, even then the law is doubtful.

Resp. The same objection was made to St. Alphonsus, who responds thus: "To this opposition I have already forestalled an answer in my book, establishing that, where there is a more probable opinion for the law, then the law is morally promulgated, and therefore obliges, notwithstanding that broad doubt for the more benign opinion. For where we do not find certain truth, we must follow that opinion which approaches more closely to truth; but, on the contrary, where opinions are equally probable, the law is truly doubtful with a strict doubt, so that in no way can the law then be said to be sufficiently promulgated" (I, 88; ed. G., p. 69). Certainly only in strict doubt is the existence of the law invincibly unknown, but not in broad doubt, or in the state of one opining.

OBJ. 4. He who proves too much proves nothing. But from the thesis, all probabilists would have to be held as laxists, many of whom indeed were of the best note, and existed as distinguished theologians. Therefore the thesis is false.

Resp. I concede the major; I deny the minor. The thesis is not directed against all probabilists. For there are those who professed probabilism not closely determined, and to be benignly interpreted in a good sense. These permitted the use of the less probable opinion, understanding beneath this a little less probable; indeed, several expressly taught this, as is evident from what was said (n. 100). Moreover, many, even if they profess too benign a system, nevertheless in the solution of individual questions and cases are grave theologians, by no means laxists.

OBJ. 5. It is better to err in mercy than in severity. Therefore probabilism, as being more benign, is to be preferred.

Resp. Since our ways will always remain uncertain, the principle is pleasing; but I deny the consequence. Rather, it is better to err neither in mercy nor in severity, but to preserve what is just and consonant with God's providence.

OBJ. 6. The comparative method is useless. For the probability of an opinion depends on the reasons by which it is supported. But the reasons for some opinion can very well be known in themselves without comparison being made with opposites. Therefore comparison is useless.

Resp. I concede the major, distinguish the minor. Reasons can be known in themselves without comparison as to their proper nature, I concede; as to their efficacy in order to solid and expeditious or practical probability, I deny. For by reason it is clear, and by daily experience it is evident, that it often happens that an opinion which previously was judged solid and supported by certain foundations, afterward, once the reasons of the adverse part have been weighed, appears little solid, indeed relying on slight probability. And the same occurs in every controversial matter. Therefore from defect of the comparative method, a certain danger is incurred of acting from an opinion which practically is only slightly probable.

OBJ. 7. The obligation of following the opinion certainly more probable would impose an intolerable yoke. Therefore it is not given. Proof of the antecedent. That obligation carries with it the necessity of knowing the more probable opinions. But all acknowledge that more probable opinions are not easily discerned from less probable ones. Therefore.

Resp. I deny the antecedent and the consequence. To the proof, distinguish the major: that obligation carries with it the necessity of knowing the more probable opinions: an absolute necessity, which would require the greatest diligence, I deny; an ordinary necessity, which requires common and proportionate diligence in investigating truth, I concede. For all approved authors admit this diligence (n. 40, 2); and when, after moral diligence has been applied, the opinion for the law is not recognized as certainly more probable, it is lawful at once to embrace the opinion for liberty. To the minor: It is difficult to discern more probable opinions from less probable ones, if even the smallest excess must be weighed, I concede; if a small and doubtful excess can be neglected, I deny. But that this latter obtains in the Alphonsian system we have already said. Therefore no burden is imposed which goes beyond moral possibility and the rules of prudence. Add that that labor, already in most cases, has been supplied either by approved authors, or first of all by St. Alphonsus.

Note. See other objections refuted in Wouters, p. 95-132.

III. The Excellent Merit of the System of St. Alphonsus

104. St. Alphonsus everywhere in his moral works commemorates this distinguished dictum of the Seraphic Doctor: "Conscience too broad and too strict is to be avoided; for the first generates presumption, the second desperation; thus the first often calls evil good, the second on the contrary calls good evil; likewise, the first often saves one to be damned, the second on the contrary condemns one to be saved" (*Compend. theol. ver.*, l. 2, c. 52).

That the rule of equiprobabilism handed down by St. Alphonsus accurately holds that middle way is already clear from what has been said (cf. n. 88 ff.).

But that it moreover surpasses the other systems in prudence, and in facility, and in authority, will be evident from what is now to be said.⁵⁹

105. I. The rule of equiprobabilism of St. Alphonsus is the most PRUDENT of all. For the Blessed Doctor proposes such a norm as guards against every illusion of self-love, and entirely closes the way to scruples.
106. It guards against the illusion of self-love. This danger threatens if someone weighs only the moments which fight for liberty, without attending to the reasons of the other part (cf. n. 67). But equiprobabilism (as the very word indicates) does not follow such a manner of acting, indeed rather it expressly rejects it.
107. It closes the way to scruples. For it does not impose strict equiprobabilism, but teaches that almost equal probability of opinions suffices, and that attention is not to be given to an excess of probability unless it appears certain and notable. Certainly proportionate diligence is required; but as often as

the intellect, with reasonable diligence applied according to its powers, does not clearly perceive the certain preponderance of the safer opinion, liberty remains in full possession of its right. What more accommodated to even moderate minds can be desired?

Let us hear the theologian who drew up the *Votum* for the concession of the title Doctor. "But I would not wish anyone to think," he says, "that Alphonsus supplied only this one thing, namely that he collected dissenting opinions and estimated them very acutely; since besides this it is certain that the solid foundations of the whole moral discipline were established through him. For all know that the question concerning the nature and use of probability is fundamental in Moral Theology.... Now, before Alphonsus, a question of this kind was so entangled that probabilists and probabiorists, contending among themselves, very easily struck either upon the rock of laxism or upon that of rigorism. But that now in this question extremes are avoided is owed TO ALPHONSUS ALONE, who introduced that golden system of EQUIPROBABILISM, which he constantly retained and adopted in explaining moral discipline."

106. II. The rule of equiprobabilism of St. Alphonsus is the EASIEST of all. For two things, in every controversy concerning the lawfulness of actions, suffice:
107. To see whether law or liberty possesses, according to the things set forth above (n. 55). 2. To adjudge the palm to the part which possesses, unless the opinion which favors the other is evidently more probable.

YOU WILL OBJECT. It is easier to judge concerning solid and grave probability than concerning the excess of the opposite probability. Therefore the rule of probabilism is easier, which teaches that an opinion can lawfully be admitted, provided it is truly and solidly probable.

Resp. The objection is vain. For before you embrace an opinion, either you consider it alone, or you compare it with its contradictory. If the first, you sin by acting imprudently; for it is proper to imprudence, St. Thomas testifying, to judge or act while sufficient deliberation is neglected. Would you not then have to be called similar to a judge who, after hearing only one part of the litigants, and indeed the part friendly to himself, adjudged the case to that same part? (cf. n. 40, rule 2).

If the second, there is no reason why you should glory in a simpler rule; since, in order to judge your probability as theologically and relatively or comparatively grave, you must institute the same weighing of reasons standing on each side. Therefore they deceive themselves who think that the rule of absolute probabilism is simpler; for this either is not a right rule of morals, or it demands for itself the same labor as ours.

107. III. The rule of equiprobabilism of St. Alphonsus is the most APPROVED of all. Those things which, from the testimonies of authors and of the Prelates of the whole world, and from the approval of the Holy See, are reported in favor of the moral doctrine of St. Alphonsus in general (cf. Acts of the Doctorate), have force not only with equal but with stronger right concerning his moral system. For this system sustains and moderates the whole moral doctrine, since almost all doubts are resolved according to its norm.

The Sacred Congregation of Rites understood this very well; and hence it was why it subjected the system of the holy man to the most rigorous investigation, not once, but a second time; with this result, that the system, from that time, received for itself the assent of all and almost unanimous applause in the Catholic world.⁶⁰ The defender of the cause of Beatification had already gravely testified this before the assembly of the Most Eminent Cardinals, saying: "But if the

⁵⁹Cf. *Vind. Alph.*, P. I, c. 1, § 1, art. 4 and Apologetic Dissertation, n. 158-190.

⁶⁰*Vind. Alph.*, P. I, c. 3, § 2, a. 2; Wouters, *Minusprobab.*, p. 43 ff.

wise system of Ligorio did not please certain private writers, nevertheless it pleased others infinite in multitude and most excellent in doctrine, who judged that he had carried every point in this question: therefore throughout all Italy, Spain, Germany, and other parts of the world, they received his Moral Theology with the highest applause.”⁶¹

But there is not given another system of Moral Theology which equally authentic testimonies adorn, and which so many and so splendid suffrages commend. Nor is it true, as certain authors wrongly affirm, that the aforesaid approval belongs also to simple or absolute probabilism; since it has been proved sufficiently and more than sufficiently that the system of St. Alphonsus is and always was alien from that more benign probabilism which he himself calls a lax opinion (n. 102).

Note. As to the manner of acting, if a penitent follows the more benign opinion, see n. 1789.

Scholium

On the Manner in Which St. Alphonsus States His Opinions⁶² 108. For the more perfect understanding of St. Alphonsus’s Moral Theology, it seems useful to propose some rules by which the genuine judgment of the holy man concerning the value of opinions may be known. For when the Blessed Doctor commemorates diverse opinions of authors, he does not always state in set words which one out of all is to be held in practice. The disciple of so great a master will detect this by an easy task, if he knows his system well, and at the same time knows the manner in which he himself is accustomed to declare his opinions. On this matter, attention must be given to the following RULES:

1. Generally that opinion alone which St. Alphonsus calls probable is truly probable for him. Hence, when he uses this formula: The authors probably say, in this case he judges their opinion probable. But when he uses this other formula: The authors say that it is probably lawful, from this it is not clear that that opinion is regarded by him as probable; for his words indicate only that he is setting forth the judgment of the authors whom he cites.
2. If, speaking of some opinion, he says: it does not seem improbable; or: it is not improbably said; in this case, regularly, he holds the opinion as sufficiently probable, unless perhaps he opposes to the opinion something certainly or notably more probable.
3. An opinion which he calls neither probable nor improbable, he generally leaves to the judgment of others. Yet one must see what he says either before or afterward: for, if he opposes nothing at all, and the author whom he cites is grave, that opinion is generally to be held as sufficiently probable: as, for example, when at the end of a question he adds: Lugo... adds... notes.
4. If he expressly says of some opinion: I do not dare to condemn it, or I do not dare to call it improbable, by that very fact he declares that, in his judgment, it is doubtfully probable, or that it is referred by him to the judgment of the more prudent.
5. When he calls some opinion truer, or much or absolutely more probable, or more probable and at the same time common or most common, in this case he no longer judges the opposite, with respect to the other, as solidly probable, even if he does not expressly reject it as improbable.
6. The same must be said when he calls one of the opinions more probable or more common, and does not set forth a judgment concerning the opposite; for by this manner of speaking he intends to signify that that opinion seems to him so much more probable that he does not acknowledge the opposite as truly probable.
7. An opinion to which nothing is opposed, and which he simply calls probable (a case which nevertheless rarely happens), ordinarily founds moral certitude for practice (cf. n. 72).
8. An opinion which he simply calls common, with no judgment given concerning the opposite, must certainly be called his own.

Warning. In this work we shall for the most part pass over opinions which are destitute of the force of obliging, or which have little bearing on the matter, and we shall report only those which St. Alphonsus supports for practice, referring the reader to the work of the Holy Doctor himself for richer study and understanding. Nevertheless, in appraising opinions we shall use the same word as he does, and in questions truly controversial we shall always set forth each opinion in a few words.

⁶¹New position concerning virtues, n. 97.

⁶²*Vind. Alph.*, t. II, App. 1, Key of the Moral Work, § 2.

Treatise II

On Laws

Proemium

On the Notion of Law

St. Thomas, 1.2, q. 90-108; St. Alphonsus, I, n. 90 ff.; ed. G., I, p. 70; Suarez, *de Legibus*, l. I, c. 1-4; Gonet, *Clypeus Theol. Thom.*, tr. 13, p. 13; Zigliara, *Ethica*, n. 17, II; D'Annibale, I, n. 160; Kuhlmann, O.P., *Der Gesetzesbegriff vom hl. Thomas* (Bonn, 1912).

109. DEFINITION. Law (from binding), taken in the broader sense, is a rule according to which something ought to be done.

But moral law, which directs the free actions of man, is more precisely defined by the Angelic Doctor: An ordination of reason for the common good, promulgated by him who has care of the community (1.2, q. 90, a. 4).

It is called 1. an ordination, that is, a prescription or command, which strictly obliges. In this matter it differs from COUNSEL, in which there is only directive and suasive force. Therefore obligation pertains to the essence of law, or that moral necessity by which free will is bound to doing or omitting something.

2. of reason. For an ordination or precept, although it proceeds from the will of the Superior, nevertheless essentially requires also a judgment of the intellect, by which judgment the will, in prescribing, is rightly directed. Indeed no law can consist unless it is consonant with reason. Hence, in relation to the legislator, law is right reason of commanding; but in relation to subjects it is "right reason concerning things to be done" (H. Ap., II, 1).
3. for the common good. For the end of law is good, not indeed the private good of the Superior or of the subjects, but the common or public good of society. For it is contrary to right reason that the whole society be ordered to the advantage of one or only some, and that the whole be referred to the part.

For the rest, while each one procures the common good, he necessarily also consults his own proper good, at least spiritual; for the intention of the legislator (as St. Thomas teaches with Aristotle) is to make the subjects good (*Contr. Gent.*, l. 3, c. 115, n. 3).

4. by him who has care of the community. For the faculty of making laws stands with him to whom the preservation and governance of the community pertains. Now by the name of community we understand a perfect community, namely one capable of political government, such as the Church, a kingdom, or a province of its own right. For, in order to make a law, domestic or dominative power is not sufficient, as Suarez says (l. I, c. 9, n. 4), such as men enjoy over a wife, a father over children, a master over servants (which power grants only the right of imposing precepts); but that public power of governing and coercing is necessary which is designated by the name jurisdiction (cf. n. 138).
5. promulgated. For promulgation pertains to the essence of any law which has the force of obliging, as St. Alphonsus (l. c.) demonstrates at length from St. Thomas. And the principal reason is that since law is a rule to which the community must conform itself, it must be proposed in such a way that it becomes known at least to the greater part of the community (cf. n. 158).
6. From these things you will gather: 1. LAW differs from a simple PRECEPT or mandate: a) by reason of the one commanding, because the legislator is a public person, but one prescribing can be a private man, possessing domestic power; b) by reason of the subject, because law is imposed on the community as such, and on individuals insofar as they are parts of the community; but a precept is imposed on private persons; c) by reason of the end, because law proximately and primarily regards the common good, but a precept the private good; d) by reason of extension; for since law is made for the community as such, if the community is contained in a certain place, law does not oblige outside this place. The contrary is had in a precept, which, because it affects the person, accompanies him wherever he goes, and, as they say, clings to his bones; e) by reason of stability; for a precept is transitory, and expires by the death or removal of the one commanding, unless the matter is no longer intact, or unless the precept concerns privileged causes, as pious causes are in Roman law. But law, by its nature, is perpetual: for it is established for the favor of the community which, as such, is not subject to death (l. 140; Reuter, P. I, n. 127; D'Annibale, I, n. 248).
7. 2. In order that a law (precept) oblige, it is required: a) on the part of the MATTER: alpha) that it be honest, that is, conformable to right reason and not contrary to divine law; beta) just, that is, that it proceed from legitimate power, not injure the rights of subjects, nor impose disproportionate burdens; gamma) morally possible, that

is, that, for the circumstances of places and times, it not be too difficult to observe; delta) useful, that is, that it truly and notably conduce to the public good; b) on the part of the FORM, it is required that it be: alpha) manifest or clear; beta) promulgated, as we have already noted (n. 109). These things will be explained more fully below (n. 154).

Note. A precept can be imposed both by force of dominative power and by force of jurisdiction (cf. n. 14). In the first case, the transgressor sins against obedience alone, because the Superior, using such power, merely intends the subjection of the subject. In the second case, he ordinarily sins against only the virtue whose good is injured, because jurisdiction is an authoritative means for procuring the good of virtue.

112. DIVISION. Law is distinguished: 1. By reason of the object, into affirmative, which commands that an act be placed, and negative, which orders that an act be omitted. They differ between themselves in that affirmative law indeed obliges always, but not for always; but negative law obliges always and for always. And the reason is that, at any time whatever, we are bound to abstain from every evil, not however to do every good.
2. By reason of the legislator, into natural and positive. Natural law is that which becomes known to man from the very light of reason. To this belong, if you except the circumstance of the Sabbath (or Sunday), all the precepts of the Decalogue. Positive law, which is subdivided into divine and human, is that which proceeds from the free will of God or of men, and depends on it; for example, the law concerning Baptism, concerning the Lenten fast, etc.

This indeed is not dictated by nature, but is conformable to the law of nature, and especially differs from it in this: that those things which are prohibited by natural law are therefore prohibited because they are evil; but those things which are prohibited by merely positive law are therefore evil because they are prohibited (I, 101).

And these are the principal divisions of law (cf. n. 113 and 136). But since the formal notion of law comes in the first place from the legislator, hence it is why, according to the diversity of the legislator, namely divine or human, we judge that the present Treatise must be divided into two Dissertations, in one of which there will be treated OF DIVINE LAW, but in the other OF HUMAN LAW.

Dissertation I

On Divine Law

113. Divine law is twofold, namely natural and positive. Now natural law is usually considered under a twofold aspect: 1. insofar as it is eternal, existing in the mind of God; 2. insofar as it is promulgated in time, and existing in creatures. Although positive divine law has been given through a decree which existed from eternity, nevertheless, strictly speaking, it is not called eternal; because, as we shall see below, it does not participate in the same necessity or immutability as natural law. Therefore we shall treat: 1. of eternal and natural law; 2. of positive divine law.

Chapter I

On Eternal and Natural Law

St. Alphonsus, I, n. 57 and 70; ed. G., I, p. 26 and 41 ff.; H. Ap., I, 50; Billuart, Diss. II, a. 2-4; Gonet, *Clypeus Theol. Thom.*, tr. VI, disp. 3; Leroy, *Religion des Primitifs*; Huby, *Manuel d'histoire des Religions*; D'Annibale, I, n. 190.

Article I

On Eternal Law

114. DEFINITION. Eternal law, in a broad sense, is defined by the Angelic Doctor (1.2, q. 91, a. 1): "The reason of the order of things to the end." By this word order is comprehended every order which is had in the world, namely physical and moral, natural and supernatural.

But in a stricter sense, eternal law is defined by St. Augustine (*Contr. Faust.*, l. 22, c. 27): "The divine reason or the will of God, commanding that the natural order be preserved and forbidding that it be disturbed."

115. PRINCIPLES. I. There is in God eternal law. It is evident 1. From Sacred Scripture, especially Prov. 8:23: From eternity I was ordained, etc.; where those things which are said of wisdom, according to the interpretation of doctors, are to be understood of eternal law, which rules and moderates all things. It is proved 2. From reason; for this teaches that there exists in the world a certain natural, or essential, order, which arises from the very natures

of things, for example, that between God and man there intervenes the relation of Creator to creature, of Lord to servant, etc. Now God, who cannot deny himself, necessarily wills that an order of this kind constituted by him not be disturbed, but be preserved. But this most ordered and immutable will of God most rightly receives the name ETERNAL LAW (Suarez, *de Leg.*, l. 2, c. 3).

116. II. Eternal law, as such, is not law properly so called, but is the reason and source of all laws.

We say 1. It is not law properly so called; as not having been proclaimed to subjects, who did not exist from eternity. Hence St. Alphonsus with Sylvius (I, n. 71): "Eternal law," he says, "was from eternity law materially, not formally, or under the notion of law actually obliging."

In another place (I, n. 70; ed. G., I, p. 41) the Holy Doctor says: "Eternal law, with respect to men, is not proper law." For proper law, as to them, is natural law.

2. It is the reason and source of all laws. For every law, whether divine or human, receives the force of obliging from the fact that order, or eternal law, demands that subjects obey Superiors prescribing just things.

Nor does it stand in the way that positive laws, especially human laws, are mutable; for eternal law itself establishes that, according to the changed conditions of times, places, and persons, these laws are changed.

117. III. All human things, although in a diverse way, are subject to eternal law. For eternal law is the reason of divine governance: therefore whatever things are subjected to divine governance are also subjected to eternal law; accordingly all things are subjected to this law. But this subjection happens in a twofold way: in one way insofar as eternal law is participated by knowledge, by which a certain rule, which is a principle of acting, is impressed on the mind; in the other way insofar as it is participated by the natural inclination implanted in creatures, by which they are moved by divine providence. In this latter way irrational creatures are subjected, but rational creatures are subject in both ways. For in these there is both a certain notion of eternal law and a natural inclination to that which is consonant with this law.

Yet there is a distinction between the good and the wicked. In the wicked, the natural inclination to virtue is depraved through vicious habit, and the natural cognition itself of good in them is darkened through passions and habits of sins. Therefore the manner of subjection in the wicked is imperfect. But in the good a more perfect subjection is found, because both above the natural cognition of good there is superadded to them the cognition of faith and wisdom, and above the natural inclination to good there is superadded to them an interior motive of grace and virtue. Yet among the wicked, as much as is lacking on the part of action is supplied on the part of passion; namely insofar as they suffer what eternal law dictates concerning them, insofar as they fail to do what agrees with eternal law. Therefore whoever does not hold order, is held by order. Cf. St. Thomas, 1.2, q. 93, a. 6.

118. Note. Eternal law is the remote rule of morality, whether of our intellect or of our will. For through it, or through its light, we judge all things; but we cannot judge it, because it is infinite and incomprehensible, nor can any created intellect reach so far as to contemplate perfectly and from every side what the order of things is toward God. Hence, since sin turns aside from this order, we can never perfectly inspect its intrinsic and total malice.

Article II

On Natural Law

Three things come here to be considered, namely of natural law: 1. existence and object; 2. promulgation and cognition; 3. immutability.

§ 1. On the Existence and Object of Natural Law

119. DEFINITION. Natural law (which is also called natural right) is the ordination of God commanding that the natural order be preserved and forbidding that it be disturbed, known through natural light. It is eternal law itself, insofar as the rational creature participates in it.

Therefore human reason is not the source of law, but is the faculty by which law is known (*Dichiar. del sistema*, n. 19). Hence this 3rd proposition of the Syllabus was proscribed by Pius IX: "Human reason, with no regard whatever had to God, is the sole arbiter of true and false, of good and evil; it is a law to itself, and by its natural powers suffices for caring for the good of men and peoples." The saying smells of insanity: Thus I will, thus I command, let will stand for reason, if indeed it is understood absolutely and without restriction.

DIVISION. In natural law primary and secondary right are distinguished. Primary, or absolute, is called that whose matter has an immediate connection with the essence of God; so that not even indirectly, through added circumstances, can it be changed: for example, you shall not swear falsely, you shall not blaspheme, you shall not tell a lie. Secondary, or hypothetical, is that whose matter concerns created things; which for that reason can be changed indirectly by the dominion over things, namely by God (or also by man, according to the need of the common good): for example, you shall not kill, that is, by private authority; you shall not commit theft, that is, as long as the thing will have been another's. Suarez, *de Leg.*, l. 3, c. 13, n. 5.

120. PRINCIPLES. I. Natural law exists. It is evident from the words of the Apostle (Rom. 2:14): The Gentiles who do not have the law (that is, the Mosaic law), naturally do those things which are of the law; not having a law of this kind, they are a law to themselves: who show the work of the law written in their hearts, their conscience bearing witness to them, and their thoughts among themselves accusing or also defending.

121. II. The object of natural law is everything which so agrees with or repugns to rational nature that, for the preservation of order, it is necessarily prescribed or prohibited by the very Creator of nature. In other words: to the law of nature belong all precepts to which, from the nature of the thing and independently of any positive law whatever, we are bound. This is evident from the very definition of natural law.

"The ORDER OF NATURE is in this," says Reuter (P. I, n. 29), "that a rational creature have himself duly toward God, toward the neighbor, toward himself, and toward other creatures. Now the order toward God requires that he render faith to divine wisdom and veracity; hope and trust to benignity, mercy, omnipotence, and fidelity; love to the highest goodness; ... subjection and obedience to supreme jurisdiction, etc., and that he avoid the opposite vices. The order toward the neighbor requires that he love him, revere parents, obey Superiors, render to each his own, ... exercise the other virtues for an ordered society, and flee the vices opposed to these. The order toward himself requires that appetite be subjected to reason, and reason to God and Superiors. Finally, the order toward the remaining creatures demands that the rational creature use them rightly, as means to the end, and not expend on the means the love due to the end; nor turn them aside from the end to which by their nature and God's intention they are ordered" (cf. n. 379 ff.).

122. From these things it is inferred: 1. All acts of virtues belong to the law of nature insofar as in general they are virtuous: for reason dictates that each one act virtuously, even in a merely lawful and indifferent matter. But if the acts of virtues are considered according to themselves, and in their proper species, not all are of natural law. For this does not prescribe all actions conformable to order, but only those which are necessary for the preservation of order, and whose omission is base. Thus, for example, certain virtues, such as virginity and evangelical poverty, can be omitted without sin. Likewise, there are many acts of virtues which are of themselves mere counsel, and are prescribed only by positive law, such as abstinence from meats, and similar things (St. Thomas, 1.2, q. 94, a. 3).

123. All sins are against natural law, at least reductively and mediately: for whoever transgresses a positive precept of God or of man, by that very fact violates the order of reason, and the law of subjection which is required by nature (cf. n. 316).

§ 2. On the Promulgation and Cognition of Natural Law

123. PRINCIPLES. I. Natural law is promulgated and begins to oblige as soon as man obtains the use of reason. For natural law arises from the essences of things and from the divine perfections: therefore, as soon as man, using reason, knows God and the essential relations to him, which is to use reason, he knows natural law, and is bound to observe it. But until the use of reason is present, natural law remains promulgated only in first act, through the connatural habit of first principles (cf. H. Ap., I, 53).

124. From these things you will gather: 1. Since the promulgation of natural law becomes known through the light of reason, by that very fact it is subject to the imperfection of human reason. Hence, in order that law can be known integrally, easily, without doubt and error, another and more perfect promulgation is morally necessary; this is made both through the supernatural revelation of God and also through the infallible magisterium of the Church.

125. "The promulgation which obliges (in second act) is made when the creature knows the precept by the light of reason, or hears it from the Church, or from wise men who teach him" (H. Ap., I, 50).

126. Those sin who induce the insane, or children not yet capable of reason, to something which is against natural right (H. Ap., II, 36). For children and the insane, although they cannot sin formally, nevertheless in act they are in first act subject to the laws of nature. Hence blasphemy, for example, or a base act, is in them a material sin; and formally guilty of this is he who compels them to such a deed, or exhorts them to it. Cf. Lehmkuhl, I, n. 226. See below n. 193.

As to sins of deed, there is no difficulty. As to sins of speech, or of this sort, which require advertence and knowledge, it must be said that, if sin is lacking under the head of the delict to which they are induced, nevertheless it is present under the head of the depraved habit which is introduced into the insane, or under the head of scandal. Cf. Sweets, n. 408; Reuter, *Neo-Conf.*, p. 100.

125. II. Natural law is always sufficiently promulgated as to first principles; it is sometimes unknown as to nearer conclusions; it is often unknown as to remote conclusions. So commonly against traditionalists and rigorists.

Once ignorance of fact has been admitted, by which namely man, generally conscious of the law, does not know that this or that is contained under the law, or does not advert to this, the question is made concerning ignorance of right, that is, of obligation. For this the precepts of natural law are divided into a threefold class (H. Ap., I, 5). The first embraces universal principles of morals which are known of themselves and are dictated by synderesis: for example, "good is to be done, evil avoided; what you do not wish to be done to you, do not do to another." These principles can by no means be unknown by a man capable of reason, and are indelible in each one, because they are innate through synderesis. The second comprehends immediate conclusions, deduced from the first principles with moderate consideration, such as most of the precepts of the Decalogue. Concerning these there is not given invincible ignorance, except among the uncultivated and for a brief time, or unless a circumstance apparently rendering honest has been added, for example, as to an officious lie. The reason is that such things become known to all by the very light of nature and do not require an intricate reasoning, which nevertheless can fail in a case, for example among uncultivated peoples. The third extends itself to mediate or remote conclusions, which, through a subtler discourse, are deduced from the precepts of the Decalogue; such as are the precepts concerning not entering into usurious contracts

usurious, concerning avoiding certain scandals, and similar things. These indeed can be invincibly and inculpably unknown, and often are unknown even by holy and learned men, as is clearly proved from so many and so great controversies which have existed, and still exist, among the doctors themselves in every matter, where definitions of the Church either are desired or are not known.

Everyone knows the text of St. Augustine (*de Serm. Dom. in monte*, l. 1, c. 16, n. 50), where he doubts whether a wife, with the consent of her husband, in certain circumstances, ought to commit adultery. Thus also many could, at least for a time, believe that civil divorce dissolves the bonds of matrimony, or, in places where public prostitutes are permitted, come to this, that they admit fornication is not so great a crime. Cf. Genicot, I, p. 113; Cathrein, *Philos. mor.*, n. 178.

126. THE RIGORISTS OBJECT. God is faithful; he has promised to hear the one praying. If therefore we do not obtain light, we are at fault.

Resp. If we do not obtain light for avoiding formal sin, we are at fault, I concede; if we do not obtain light for avoiding material sin, we are at fault, I deny. Just as there is given a twofold sin, one material, the other formal, so two kinds of light must be distinguished. One light, by which material sin is avoided, is the cognition of the individual things which God commands or forbids. This light God has by no means promised to the one praying, as not necessary for salvation, since material sin does not involve an offense of God. The other light, by which formal sin is avoided, is an illumination of divine grace, by which we know the foulness of sin and the price of divine friendship, and are inclined to carry out that which conscience dictates has been commanded by God. This light God has promised to the one praying, and will never deny it (I, n. 174; ed. G., I, p. 156).

§ 3. On the Immutability of Natural Law

127. PRINCIPLES. I. Natural law is subject to no change properly so called.

And indeed, a change of law is made either from within or from without: it is made from within when a law, previously reasonable and useful to the common good, afterward becomes unreasonable and harmful; but it is made from without when a legitimate Superior either derogates from it, or abrogates it totally, or finally dispenses subjects from it.

Now, natural law can be changed in none of these ways. 1. It cannot be changed from within; for by natural law those things are prescribed which necessarily flow from the essential relations of man, and those things are forbidden which are altogether opposed to the same essential relations. But the essential relations of man are immutable, as are the essences of things. Therefore.

2. It cannot be changed from without, not even by the authority of God the Supreme Legislator. For God cannot will the nature of things and not will those things which necessarily follow from it, because "he cannot deny himself" (2 Tim. 2:13). Therefore natural law, in those things which it prescribes or forbids, is absolutely immutable (Tongiorgi, *Philos. mor.*, n. 179).

3. II. Natural law is subject to change improperly so called.

This change is made either by addition, namely when a new law is superadded to a law; or by subtraction of matter, namely when that which was the matter of a law ceases to be the object of the same law, on account of some supervening circumstance which changes it.

1. Natural law can improperly, or indirectly, be changed by addition. And in truth, many precepts have been added to it through positive laws, whether divine or human.

Thus, by natural right, the suretyship of a woman is valid, likewise marriage without witnesses is valid, etc.; and nevertheless by force of positive law they can be invalid. The reason is that these pertain only negatively to natural right, since natural law establishes nothing positively concerning them, but permits the same things to be done in this or that way.

2. It can also be changed indirectly by subtraction of matter, or rather by change of matter, namely in those precepts whose matter is subject to the dominion of God or of man.

Thus, for example, matter was subtracted from natural law when God commanded Abraham to sacrifice his son, or granted to the Hebrews the spoils of the Egyptians, or gave a precept of exterminating all the Canaanites. The same is done when God, or the Church in the name of God, dispenses in vows or oaths. For, when a just cause is present, God is judged to remit to man his debt as his proper lord, and thus to take away the vow by taking away the matter of the vow (Billuart, *de Leg.*, Diss. 2, a. 4; *Theol. Mechlin.*, *de Leg.*, n. 38).

129. From these things you will gather: It is less rightly said that natural law ceases, has an exception, admits an excusing cause or interpretation, when, circumstances having changed, it no longer brings forth the same obligation (I, 174). Thus, for example, the obligation of fraternal correction does not cease, although it does not oblige here and now, if no fruit of amendment is hoped for; the obligation of returning a deposit and preserving a secret always urges, although, if grave harm to an innocent person or to the republic threatens from this, such and such a person becomes immune from this obligation. Cf. n. 216.

Chapter II

On Positive Divine Law

Christ. Pesch, *Prael. Dogm.*, t. 5, n. 455; Lehmkuhl, I, n. 291; Tanquerey, II, n. 234; Piscetta, *Theol. mor.*, n. 287; Genicot-Salsmans, I, n. 123.

130. DEFINITION. Positive divine law is a law freely and externally given by God as author of grace, which directs man to the supernatural end.

A law of this kind, according to St. Thomas (1.2, q. 91, a. 4), is NECESSARY for the direction of our life; both on account of the insufficiency of human law and also of natural law, and especially on account of man's destination to a supernatural end.

And hence it is that positive law of God is found in every state of human nature: 1. in the state of innocence, matrimony, and this one and indissoluble, was positively instituted by God; besides, the law was given to the first parents concerning not eating the fruit of the tree of the knowledge of good and evil; 2. in the state of fallen nature, from Adam until Moses, there was both the law forbidding the use of flesh with blood and the law imposing circumcision on the family of Abraham. Hence, when it is said that then there was only the law of nature, the sense is that there were not those many laws promulgated through Moses and consigned to letters; but a few, received and preserved through tradition. Reuter (P. I, n. 138, 2, end).

DIVISION. A twofold positive law of God is especially distinguished, namely: 1. the old Mosaic law; 2. the new or Evangelical law.

I. On the Mosaic Law

131. The Mosaic law is a supernatural law, given by God through Angels and promulgated through Moses, so that the Israelite people, in honor of Christ, might be peculiarly sanctified and disposed for his advent. Its character was particular. These things are evident from Sacred Scripture, especially from the Epistle to the Galatians.

It will suffice to note the following here: 1. The Mosaic precepts were of three kinds, namely moral, ceremonial, and judicial. The MORAL precepts ordered man toward God, toward himself, and toward others. These, if you except the circumstance of the Sabbath, are altogether the same as the precepts of the law of nature. The CEREMONIAL precepts

regarded the external worship of God. All the ceremonies figured the mysteries of the new law, and concerned sacrifices, Sacraments, sacred things, and legal observances. The JUDICIAL precepts dictated the relations of men among themselves, and defined in what way justice was to be exercised toward the prince, fellow citizens, domestics, and foreigners.

2. The old law, as to moral things, remains forever; but as to the rest, which regarded only the Jews, after the death of Christ, or certainly after Pentecost, it is abrogated and dead. The first is clear from the fact that those precepts belong to natural law, and because it was defined by Trent (Sess. VI, c. 19) that Christians are bound by the ten precepts. The second is evident from the whole Epistle of St. Paul to the Galatians, and from the constant doctrine of the Church. The old law is dead (therefore prohibited under mortal sin) only as to ceremonial things, since these signified the Messiah to come.

II. On the Evangelical Law

132. The Evangelical, or new, law is a supernatural law justifying of itself, founded by Christ, promulgated by the Apostles, obliging all men until the end of the age. Its character therefore is universal.

It is called 1. new, both with respect to the old law, and because it renews man through grace; 2. founded by Christ, not written, but given orally, and then transmitted both through Scripture and through Tradition; 3. promulgated by the Apostles, and indeed solemnly, on the day of Pentecost, and then successively spread through the whole world; 4. justifying of itself; for the Sacraments from the work worked produce grace, or perfect justice, and not only legal justice; 5. obliging all men until the end of the age, because no one can obtain eternal salvation except through it. Hence all non-baptized persons, as soon as they come to sufficient knowledge of it, are bound to embrace it.

133. PRINCIPLES. I. The Evangelical law is a true law, containing precepts both sacramental and moral.⁶³ 1. It is a true law, as is evident from the words of Christ (Matt. 28): Going, teach all nations... teaching them to observe all things whatsoever I have commanded you. And from the Council of Trent, Sess. VI, can. 19, 20, and 21. 2. It contains sacramental precepts, or those pertaining to worship, that is, the Sacrifice of the New Law and the sacraments. 3. It contains moral precepts, and indeed in a twofold way: a) Some belong to the essence of Christian perfection and regard works directly necessary for salvation. For certain works have a necessary fittingness or contrariety to interior grace, and therefore are prescribed or prohibited by the new law, as St. Thomas notes (1.2, q. 108, a. 1). All these Christ, from the old law, renewed, confirmed, perfected, and vindicated from various errors of the Jews. See the little work of St. Alphonsus, *Cond. ammir. della div. Provvid.*, P. II, c. 1, n. 4-12. b) Others belong to integral perfection, and regard those who desire to be joined to Christ in a stricter way.

Therefore to the new law belong also the EVANGELICAL COUNSELS, not in the sense that they are obligatory, but that they themselves conjointly with the precepts constitute divine right; which right can be attacked by no human power, nor taken away, nor changed. These counsels are reduced chiefly to three, namely to poverty, chastity, and obedience. But their end is to procure perfect observance of the commandments, to lead Christians to the highest perfection and to a high grade of glory, and to manifest to the nations that splendid mark by which alone the Church of Christ shines forth, that is, the mark of her sanctity.⁶⁴ See the treatise on the Religious State.

134. II. The Evangelical law is perfect, nor will another more perfect law succeed in its place. So all with St. Thomas (1.2, q. 106, a. 4). It is evident from the words of the Lord (Luke 21:33): Heaven and earth will pass away, but my words will not pass away; and from Matt. 28:20: Behold, I am with you until the consummation of the age. Nothing can be nearer to the ultimate end than the new law, which immediately introduces into the ultimate end. Hence the following 5th proposition was deservedly condemned in the Syllabus: "Divine revelation is imperfect, and therefore subject to continuous and indefinite progress, which corresponds to the progression of human reason."

135. IT IS ASKED. Whether the Supreme Pontiff can dispense in positive divine right?

A twofold divine right is distinguished: one which obliges immediately and of itself, independently from every previous consent of the will of man, for example, the laws of not swearing falsely, of preserving the matter and form of the sacraments. But the other is that which concerns pacts and obligations which are introduced through the human will, for example, the law of standing by promises. With these things noted beforehand, we say with St. Alphonsus, VI, n. 1119 (cf. *ibid.*, 902, 1101):

⁶³The new law does not directly and expressly contain judicial precepts. Yet it teaches that there is present in the Church a hierarchy, to which all must subject themselves, and thus indirectly it also comprehends judicial precepts in itself.

⁶⁴Cf. Bellarmine, *Controv. de monachis*, l. 2, c. 7-13; St. Francis de Sales, *Theotim.*, l. 8, c. 6-9. See also what Noldin has, I, n. 122 ff.

1. It is certain that the Pope can dispense in divine right which arises from the human will, as in vows and oaths; for then, although he does not take away the natural obligation of fidelity toward God, nevertheless on the part of God he remits the obligation made to him and declares that it is pleasing to God that the vow, or oath, not be observed.

It is therefore a condonation of obligation rather than a dispensation; nevertheless the use of the word can be retained, because the Supreme Pontiff, as a faithful dispenser, in the person of God, determines what is acceptable to God. Thus commonly with St. Thomas (in Sanchez, *de Matrim.*, l. 8, disp. 6, n. 2; cf. H. Ap., II, 56).

2. The more common and more probable opinion denies that the Pope can dispense in those things which are of absolute divine right, that is, which are derived from the divine will alone. The Angelic Doctor teaches this openly (1.2, q. 97, a. 4, ad 3): "In the precepts of divine right, which are from God, no one can dispense except God, or he to whom he himself would specially commit it." "But this special commission," St. Alphonsus continues (l. c.), "is not had from the words: Whatever you shall bind, etc.; so much the more because dispensations of this kind in divine right would be harmful to the unity and stability of the Church."
3. "The Doctors say very probably that the Pontiff can in some particular case, not now dispense, but declare, as Doctor of the Church, that divine right does not oblige. The reason is that this power is necessary on account of the variety of human affairs: otherwise, God would not have provided sufficiently for the good government of the Church." Suarez, *de Leg.*, l. 10, c. 6, n. 7, 9 ff.; Benedict XIV, *de Synodo*, l. 7, c. 1, n. 7, consent. Cf. H. Ap., II, n. 55-56.

Dissertation II

On Human Law

Preliminary Notions

136. DEFINITION. Human law is that which is made by men having care of a perfect community, for the good of subjects.

The institution of human laws is necessary for several reasons: first, so that the good proper to the community itself may be promoted (for to this laws are principally and of themselves ordered); then, so that divine law may be better known; finally, so that, strengthened by temporal sanction, it may be observed more perfectly (St. Thomas, 1.2, q. 95, a. 1).

DIVISION. Human law is one thing ecclesiastical, another civil, another of nations.

Ecclesiastical law is made by the rulers of the Church, by force of that jurisdiction which has been divinely granted: this regards first of all the spiritual and supernatural happiness of subjects.

Civil law is established by the presidents or chief men of civil society, by force of secular and natural jurisdiction, and regards the temporal happiness of subjects.

The law of nations is that which has been established and received by the consent of all nations. It is also called international right. Now this right is either primary, by which name is designated natural right itself accommodated to nations, for example, an unjust war is not to be waged; or secondary and accepted in a stricter sense, by which name are indicated those things which, by the usage and custom of nations, on account of common necessities and mutual relations, have been adopted. Cf. Suarez, *de Leg.*, l. 2, c. 17-20; Kenrick, *Theol. mor.*, tr. V, *de Jure gentium*; Liberatore, *Instit. Ethicae*, l. 3 throughout; Cathrein, *Moralphil.*, I, 8 B, 6 K. Thus several things are judged to be of the law of nations which have been sanctioned concerning war and the manner of waging war; likewise the reception and inviolability of ambassadors, the commerce of letters, free trade with foreign nations, and similar things. Today there is commonly added the prohibition of all slavery strictly so called; the prohibition of injuring private goods in war, unless perhaps some things are excepted in naval war; free navigation on any sea (cf. Lehmkuhl, I, n. 287).

Now with every disputation concerning the law of nations passed over, as being alien to our scope, we shall discuss the other human laws. But so that the order of things may be preserved, we shall treat: 1. of the institution of laws; 2. of their promulgation; 3. of the interpretation of laws; 4. of the obligation of law; 5. of the causes removing the obligation of law; 6. of the causes removing the law itself.

Chapter I

On the Institution of Laws

St. Alphonsus, I, n. 104; ed. G., I, p. 83; Wernz, *Jus Decret.*, II, n. 755; Bargilliat, *Prael. Juris can.*, tr. IV.

137. Laws are instituted in first act, so that they can oblige, when they are established by the legislator himself; in second act and effectively, so that they oblige, when they are promulgated. Here the matter is only of the first institution.

Now, human law, in order that it can oblige, must be made by one having power, upon subjects, concerning possible and fitting matter. Therefore the following must be discussed: 1. concerning legislative power; 2. concerning the matter or object of law. The subject will be treated in chapter IV, where the obligation of law is treated (cf. n. 193 ff.).

Article I

On Legislative Power

138. NOTIONS. Legislative power is the legitimate authority of making laws. It is a certain species of jurisdiction, whose notion therefore must be set forth beforehand.

JURISDICTION (from right and to speak) is the faculty of someone having public authority and eminence over others, for their rule and governance. Therefore every act which a Superior exercises from a public office belongs to jurisdiction, such as to make laws, to dispense in them, to judge, to punish, etc. (Polman, l. 2, n. 495).

DIVISION. It is divided 1. Into civil and ecclesiastical. The former concerns secular causes and the temporal governance of the republic. The latter regards causes pertaining to the worship of God and spiritual good.

This, by reason of origin, is either of divine right or of merely ecclesiastical right. It is of divine right if it has been granted immediately by God, as the power of the Roman Pontiff, or at least if it has been divinely instituted, as the power of a Bishop; but it is of merely ecclesiastical right if it has been given from the ordination of the Church, for example, through law or privilege, as the authority of a regular Prelate, Vicar general, etc. Now, by reason of OBJECT, it is of the internal or external forum. Jurisdiction of the internal forum (or of conscience) has for its object causes which regard the relations of man to God alone, for example, to absolve from sins, to dispense in vows, in occult things, etc. It is ordered primarily and directly to the advantage and governance of the individual, whether it is exercised in the penitential forum or outside it. Jurisdiction of the external forum has for its object causes which regard the relations of man to the external community of the Church, for example, to confer benefices, to dispense in a public irregularity. It is ordered primarily and directly to the good of the community.

2. Into contentious or judicial jurisdiction and voluntary or extrajudicial jurisdiction.

The former is ordered to settling lawsuits, and must be exercised according to the rules prescribed by law. It belongs to this to define civil and criminal causes, which demand their own tribunal, to decree penalties, etc. It is called contentious from the contention of the parties. The latter regards ordinary governance and is exercised according to prudent judgment, according to rules of equity. It belongs to this to legitimate, to adopt, to dispense, to confer offices and benefices, etc. This can also be exercised validly, indeed (at least for the most part) lawfully, outside one's own territory. But contentious jurisdiction cannot be exercised in another's territory unless the explicit or at least tacit consent both of the judge of this place and of the contending parties themselves is added.

3. Into ordinary and delegated.

Ordinary is that which belongs to someone by proper right, by reason of office or dignity, to which it has been stably annexed by force of some law, custom, or privilege, such as is the jurisdiction of the Supreme Pontiff, of a Bishop, of a regular Prelate, etc. Delegated is that which is not had from proper right, but which is legitimately given by one having ordinary jurisdiction.

These things concerning jurisdiction having been premised, let us speak: 1. concerning the author of ecclesiastical law; 2. concerning the author of civil law.

§ 1. On the Author of Ecclesiastical Law

139. PRINCIPLES. I. The Pope can make laws for the whole Christian world. For it is of faith that the Roman Pontiff has, by divine right, supreme, universal, and immediate jurisdiction in the Church. "For he is the head of the whole Church, Father and Doctor of all Christians, and to him, in Blessed Peter, the full power of feeding, ruling, and governing the universal Church was handed down by Our Lord Jesus Christ." Thus (after the Council of Florence) the Vatican Council (Sess. 4, c. 3).

140. The Roman Pontiff ordinarily establishes and promulgates his decrees through the Roman Congregations.⁶⁵ “By their voice,” says Benedict XIV (*Instit.* 107, n. 6), “the Apostolic See declares its opinions” (cf. n. 169). But this must be noted, that the decrees of the Roman Congregations, if you except comprehensive declarations of laws, do not acquire the force of law unless the supreme confirmation of the Supreme Pontiff and the command of promulgation have been added. One Congregation can be excepted, namely the Congregation of Sacred Rites, which of itself, even when the Supreme Pontiff has not been consulted, has the right of establishing laws, as is drawn from the decree of May 23, 1846 approved by Pius IX. It is said: can be excepted, because there are not lacking those who deny this (Heiner, *Kath. Kirchenr.*, 1912, p. 275), or admit it only with restriction (Piscetta, *Theol. mor.*, I, n. 297).

The Constitution *Sapienti consilio*, issued by Pius X on June 29, 1908, clearly circumscribes the competence of each Congregation (cf. A. A. S., I, p. 9 ff.).

141. II. A Bishop, provided he has been canonically instituted and has taken real possession of his See, can make laws for his diocese. Doctors indeed disagree concerning the origin of this power. Some with Vasquez contend that it is derived immediately from Christ to the Bishop; others with St. Thomas and St. Antoninus say that it is derived only mediately and is communicated by the Supreme Pontiff. And this controversy indeed was agitated in the Council of Trent with great heat of minds. Today, however (Craisson, *Man. Jur. can.*, n. 868), the second opinion has become much more common. Pius VI himself, in the Brief to the Bishop of Motula, September 16, 1788, asserts: “the episcopal dignity as to order is immediately from God, and as to jurisdiction from the Apostolic See.”

It must be noted: 1. The Supreme Pontiff cannot take away from Bishops all legislative power, but he can indeed limit it, reserve some things to himself, etc. (cf. Lehmkuhl, I, n. 213).

2. The ordinations of Bishops are judged to be only precepts, not laws, unless they have been made in a diocesan Synod. Indeed a Bishop can make laws outside a Synod (after the Chapter has been heard); but in this case he must declare that he wishes to establish a stable law for all (Noldin, Gopfert, Lehmkuhl). It does not matter if the Chapter dissents, provided the matter does not concern things in which the consent of the Chapter, according to the Canons, is required for the validity of the act: for example, if they would yield to the prejudice of the Chapter or Clergy, that is, to the violation of a right already acquired (I, 104; H. Ap., II, 33). But where no Chapters yet exist, or where the right of the Chapter has been abrogated by contrary custom, the Bishop is not bound to hear it, as is self-evident (Konings, *Theol. mor.*, n. 102, 3).
3. Archbishops and Patriarchs cannot make laws in suffragan dioceses, unless they have this from custom. They can, however, settle lawsuits brought from them to themselves.
4. Bishops can do nothing against common right; but they can fortify their own laws with sanction (S. C. C., 1878).
5. III. Ecumenical Councils for the whole Church, national Councils for a nation, provincial Councils for a province, diocesan Councils for a diocese, can establish laws. The reason is that each Council is gathered either by established law or by pontifical authority, but their decrees receive strength from the approval of the Supreme Pontiff.

It must be noted. 1. An ecumenical Council does not possess its authority unless the Pontiff presides over it through himself or through Legates, and confirms its decrees. For the Church cannot be represented when its head is absent; and an ecumenical Council derives its force and infallibility from the Supreme Pontiff (I, n. 121; ed. G., I, p. 107).

2. From the Constitution of Sixtus V, in the year 1588, the decrees of provincial Councils must be sent to the Sacred Congregation of the Council, so that they may be reviewed and, if necessary, amended. In the year 1896 the Holy Office declared that these Councils enjoy the power of making laws. Read the Constitution *Sapienti consilio* of Pius X, with the statute *de Ordine servando*, c. 7, a. 4, 6. The CONFIRMATION of Synods by the Apostolic See can be made in two ways, carefully to be distinguished: in common form, or in specific form: 1. Statutes are said to be confirmed in COMMON form if only it is said that nothing worthy of censure is contained; and regularly there is made only this simple revision, which attributes to them no new right or efficacy. 2. Confirmation is said to be made in SPECIFIC form if they are confirmed by Apostolic authority with the clause *motu proprio* and from certain knowledge. A statute confirmed in specific form, since it has put on the nature of a pontifical law, no one of inferiors may derogate from; indeed, from this confirmation a statute receives such powers that it prevails over common right to which it would be contrary. Thus Benedict XIV (*de Syn.*, l. 13, c. 5, n. 11).

⁶⁵Especially as to decisions pertaining to doctrine, the legislative power of the Sacred Congregations must be established and vindicated. Thus Pius IX, on December 21, 1863 (Denz., n. 1537). Cf. the letter of Leo XIII, June 1, 1889 (*d. S. S.*, vol. 21, p. 709).

3. IV. The cathedral Chapter, when the see is vacant, enjoys legislative power, since it succeeds into the place of the Bishop (I, 104). Nevertheless, since jurisdiction, divided among many, is exercised with difficulty, the Council of Trent ordered that, within eight days from the known vacancy of the see, the Chapter elect a capitular Vicar, into whom all jurisdiction, whether ordinary or delegated by law, is irrevocably transferred. But when the see is vacant, neither the Chapter nor the capitular Vicar can abolish diocesan statutes. They can only dispense in them, or suspend their execution. "When the episcopal see is vacant," says Innocent III (*Decret.*, l. 3, tit. 9, c. 1), "nothing ought to be innovated."
4. V. Finally, those persons enjoy legislative power to whom jurisdiction of the external forum has been communicated by the Supreme Pontiff, such as Prelates who obtain quasi-episcopal jurisdiction, for example Abbots by ordinary right, and Apostolic Vicars by delegated right. Likewise, Prelates of regulars, within the limits of their jurisdiction, can establish true laws, or perpetual statutes, whether in the general Assemblies of the Order, or in another way, according to their own constitutions approved by the Holy See.

But parish priests do not have jurisdiction of the external forum, and therefore cannot, not even for removing abuses, make laws or decree penalties. Hence, if they need external and judicial help, they must recur to the Bishop. Cf. Trent, Sess. 24, c. 1, *de ref. Matrim.*

Nor similarly can Abbesses or Superioresses of Nuns make laws properly so called. Nevertheless they can, for the right governance of the monastery, give precepts; indeed they can oblige under grave matter to observing them (I, 104; IV, 52). See Lugo, *Resp. moral.*, l. 6, dub. 6, n. 8-9.

For nuns the Pope, the Bishop, the Superior general of orders of men who have an order of women annexed, can establish laws.

Scholium

On Ecclesiastical Right 145. The RIGHT OF THE CHURCH is divided into written and unwritten.

I. WRITTEN RIGHT contains special or general ecclesiastical laws. The special laws for diverse places report the statutes of provincial Councils and Synods. Concordats also pertain to particular right. The general laws of the Church are contained in a threefold collection, by which ancient right, new right, and newest right are constituted.

Ancient right extends from the age of the Apostles to the twelfth century. Those old laws are found inserted in more recent right. New right runs from the twelfth century to the fourteenth century, and is contained in the Body of Canon Law. Newest right consists of all the laws which were established after the Body of Canon Law was closed. Concerning all these things the Canonists treat at length. Cf. Devoti, *Inst. Can.*, Proleg., c. V, VI, VII.

II. UNWRITTEN RIGHT embraces tradition and custom. Tradition is the mandate of the legislator which, announced to peoples by the living voice, has come down even to us. Custom is right introduced by the very manners of men. Both draw obligation with them.

146. The BODY OF CANON LAW is the complex of ecclesiastical laws. It consists of six parts, which are: the Decree of Gratian, the Decretals, the Sixth, the Clementines, the Extravagants of John XXII, and the Common Extravagants.

The DECREE OF GRATIAN (that is, the collection of Decrees, published in the year 1151 under the title "Concordance of Discordant Canons," made by the work of Gratian, a monk from the Order of St. Benedict) consists of three parts; of which the first treats of ecclesiastical persons, and is divided into 101 distinctions, which again are distributed into chapters or canons. It is cited in the following way: Chapter *Jejunium* 7, dist. 76; or also: Dist. 76, c. 7. The second part, which treats of actions or of judgments, is divided into 36 causes; but the causes are divided into questions, and the questions into chapters, or canons. It is cited: Chapter *Qui viderit* 13, quest. 5, caus. 32; or: Caus. 32, q. 5, c. 13. The third part treats of sacred things, and consists of 5 distinctions, which are divided into various chapters or canons. It is cited: Chapter *Est unitas* 49, dist. 4, *de consecrat.*; or: *De consecrat.*, dist. 4, c. 49.

The DECRETALS, or the Five Books of Decretals, collected by St. Raymond of Pennafort, O.P., by order of Gregory IX and published in the year 1234, have titles and chapters. They are cited in this way: Chapter *Pervenit* 28, *de appellationibus*; or *Decretal.*, book 2, tit. 28, c. 28. Cf. De Angelis, *Prael. Jur. can.*

The SIXTH, or Sixth Book of the Decretals, is so called because it was added to the five books of the Decretals, and contains the Decretals edited from Gregory IX up to Boniface VIII. It came forth in the year 1298 by the authority of Boniface VIII. It is divided into five books, which also have titles and chapters. It is cited in the same way, but there is added: in 6 (in the Sixth).

The CLEMENTINES, so called from Clement V, who after the Council of Vienne (over which he presided in the year 1311) ordered them to be collected. They consist of Constitutions edited either by Clement himself or by the Council of Vienne. John XXII promulgated these in the year 1317. They are cited: Clem., *Si plures* 3, *de praebendis*; or Book 3, tit. 2, c. 3, in the Clementines.

The EXTRAVAGANTS OF JOHN XXII are Constitutions which he himself edited in the earlier years of his Pontificate. They are called extravagants because they wander outside the Body of law collected up to this point. They are accustomed to be cited in this way: *Extrav. Joann. XXII*, tit. 4, c. 1, or: *Extrav.*, tit. 4, c. 1.

The COMMON EXTRAVAGANTS, so called because they were edited by John XXII and by several other Pontiffs, are likewise divided into five books, and these into titles and chapters. They are cited: *Extrav. comm.*, book 5, tit. 3, c. 2; or: Chapter *Vas electionis*, *de haereticis*, *Extrav. comm.*

Gregory XIII, by the Bull *Cum pro munere pastorali*, took care that the whole Body of Canon Law, diligently emended, be published at Rome. But it is certain that book VII of the Decretals and the *Institutiones* of Lancellotti, which are read appended at the end of the Body of Law, do not have the force of law, since they possess no Pontifical confirmation. The same must be said of the Decree of Gratian. For, although it was several times emended by the care of the Roman Pontiffs, and is everywhere cited by authors, nevertheless, Benedict XIV testifying (*de Syn.*, l. 7, c. 15, n. 6), “it has been received among all that whatever is contained in it has other as much authority as it would have had of itself if it had never been inserted in the collection of Gratian.” But the other parts of canon law universally oblige, unless they have been abrogated by a contrary law or legitimate custom (I, n. 105).

§ 2. On the Author of Civil Law

147. Concerning the legislative power of secular princes, there have been various ravings of heretics and unbelievers. Some, among whom were the Albigensians, denied that princes and their laws must be obeyed. Others, with the Reformers of the sixteenth century, ascribed all power to princes, even concerning spiritual things. Others, such as the followers of modern liberalism, contend that supreme authority consists in the sum of number and material forces, etc.

148. PRINCIPLES. I. Secular princes and legislators have from God the power of commanding and making laws concerning temporal and civil matters. This proposition, Suarez testifying, is of faith, or at least proximate to faith (*de Leg.*, l. 3, c. 5, n. 1).

It is proved 1. From the Epistle of St. Paul to the Romans (13:1): There is no power except from God... Therefore he who resists the power resists the ordinance of God. Cf. Prov. 8:15, where it is said: Through me kings reign... through me princes command. Therefore kings are ministers of God (Rom. 13:14), not ministers or mandataries of the multitude.

2. By reason. Civil society emanates from the Author of nature, that is, from God. Now, in order that some society can subsist, there is necessary in it some supreme authority, which is the foundation or principle of political unity. Therefore legislative power must be traced back to God, as author of nature, nor does it emanate from the people, even if it is bestowed on a man through the people as mediator (I, 104). Cf. the Encyclical *Diuturnum* of Leo XIII, June 29, 1881. See more among the philosophers.

Therefore St. Alphonsus rightly says (H. Ap., XIII, 13): “It is altogether false that in the community of subjects there is some authority superior to and independent from the prince, so that, in the case in which the prince governs the kingdom perversely, the whole community could despoil him of kingdom and life.” This error was condemned by Pius IX (*Syll.*, n. 63) and by Pius X, in the letters against the Sillonists (A. A. S., II, p. 615).

149. II. Civil power is altogether distinct from ecclesiastical power, and necessarily subordinated to it. The proposition is certain and common.

Civil power: 1. Is distinct; this is evident from the words of the Lord (Matt. 22:21): Render therefore to Caesar the things that are Caesar’s, and to God the things that are God’s. But the distinction is had not only as to origin and form of government, as was said (n. 138), but especially as to the proximate end proper to each.

2. It is subordinated. “Secular power,” says St. Thomas (2.2, q. 60, a. 6, ad 3), “is subject to spiritual power, as the body to the soul.” The reason for this subordination is the very subordination which the secondary end necessarily has to the ultimate end, that is, the subordination of earthly happiness, which civil society proximately intends, to heavenly happiness, which the Church proximately intends, and to which she in reality leads. See the Encyclical *Immortale Dei* (November 1, 1885).

Hence: 1. It belongs to civil power never to impede the attainment of the ultimate end, to which it is remotely ordered, to protect religion, and to promote the moral good of the community.

2. While it establishes or executes laws, it necessarily places moral acts, in which (if the matter concerns a Christian legislator) it is subject to the Church, just as private men are. Wherefore "the Supreme Pontiff will be able to abrogate and correct the civil laws of other princes, if they are opposed to equity" (I, n. 104), and laws thus corrected and abrogated no longer oblige in conscience (I, n. 106).

3. Questions. QUERY 1. Who are the men in whom legislative power inheres in fact?

Resp. They are those who enjoy supreme authority and do not act in the name of another, such as kings, emperors, princes in a principality, presidents of a legitimately constituted republic, etc.; but not leaders of soldiers, nor prefects of provinces, because they are only delegates, who cannot act in their own name. But in representative kingdoms, legislative power belongs not only to the king or president alone, but also to representatives elected either by the king himself or by the people.

QUERY 2. Whether even a tyrant must be obeyed?

Resp. Distinguish. 1. If the tyrant is one only by REGIMEN (that is, if he rules and oppresses perversely the kingdom which he legitimately possesses), obedience must certainly be given to him in lawful things: as is evident from what was said n. 148. But what remedy remains if the regime of the prince were excessively unjust and tyrannical, and human help could not be had? "Recourse must be had," says St. Thomas (*de Regim. Princ.*, l. 1, c. 6), "to God the king of all, who is the helper in necessities. But in order that the people may deserve to obtain this benefit from God, it ought to cease from sins, because in vengeance for sin, by divine permission, the impious receive power." Cf. H. Ap., VIII, 13.

2. If the tyrant is one by TITLE (or a usurper), in the very act of invasion obedience must not be given to him, nor is it lawful to acknowledge or help him by deeds, so that he may be established in his possession. For the fact of usurpation, of itself, gives no right to the invader, who, since he is in bad faith, can never heal his possession by prescription. "Nor is right acquired by the mere material fact" (*Syll.*, error 59).

Therefore subjects, as soon as they can do this without detriment to the public good, are bound to return to the former lord.

But if the usurper now peacefully holds public authority, and his possession, by lapse of time, is now so greatly strengthened that the former order cannot be restored without grave detriment to the public good, obedience must be given to him in lawful things, not otherwise than if he were the legitimate prince. For the peace to be preserved for the community demands this for itself; nor does such obedience include any approval of tyranny, because it is by no means rendered for the sake of the usurper, but for the sake of the subjects who live under his command (I, n. 94; ed. G., I, p. 71). Cf. Muller, l. 1, § 50, n. 8.

Scholium

On Civil Right Civil right, or the collection of civil laws, is old or modern.

151. I. The old laws are contained in the Body of Civil Law, which is a complex of laws which the Emperor Justinian, in the sixth century, especially by the work of Tribonian, the most celebrated jurisconsult, collected into one and published. It consists of two tomes. The first contains the *Institutiones*, which are as it were the elements of law, distributed into four books, and the *Digesta juris enucleati*, or Pandects, which consist of 50 books and are generally cited *ff.* The second tome contains the collection of decisions which the same Emperor afterward edited, that is, the Code distributed into 12 books. To the Code are added 68 more recent Constitutions, which they call Authentics and Novels, as if newly edited. These laws constituted Roman law, which with ecclesiastical law formed common right, so called because for several centuries the whole world commonly used it.

152. II. The laws of modern right are found in various codes, which almost all kingdoms established as proper to themselves, especially from the time of the French Disturbance, at the end of the eighteenth century.

Article II

On the Object or Matter of Law

The object of law is that which law prescribes or prohibits, and which is to be performed or omitted by the subject.

153. PRINCIPLES. I. The object or matter of human law is all actions which can conduce to the common good or oppose it. The reason is that legislative power has been granted by God as a means by which the good of society may be promoted. St. Thomas, 2.2, q. 105, a. 5.

154. II. The object of human law ought to be honest, just, morally possible, and useful. This follows from what was said concerning the nature of law (n. 109 ff.).

It ought to be 1. Honest; because any law whatever ought to be consonant with right reason.

Hence those things which are against divine law cannot be prescribed, for example, a duel; nor can those things which are prescribed by divine law be prohibited, for example, the religious education of children. In these things this has force: It is necessary to obey God rather than men (Acts 5:25). Cf. the Encyclical of Leo XIII (in Denz., 1850-1857).

2. Just, that is, such that it does not exceed the power of the legislator.

Hence, if the legislator makes a law for persons who are not subject to his rule, or concerning things to which his jurisdiction does not extend, he sins against justice, at least legal justice, nor does such a law induce any obligation. Except if from another head, for example, avoiding scandal, avoiding public disturbance, an obligation urges (Sweens, n. 369).

Hence: a) By civil law nothing can be established which is against ecclesiastical law; nothing by the law of an inferior legislator which is against the law of a legislator of a higher grade.

b) Nor can unjust things be prescribed with respect to subjects, namely such things as would injure equality of proportion in the distribution of burdens: for example, if the poor were burdened equally with the rich (cf. n. 400, 2).

c) But the legislator would not exceed his power if he prescribed or prohibited external occult acts. For it belongs to human law to direct whatever is external; but that the act (for example, external heresy) remains occult, happens per accidens. Therefore such acts are rightly prohibited.

d) But law, precisely because it ought to be confined within just limits, cannot extend itself to past acts. This cannot be done either by reason of fault, since there is no transgression where there is no law; nor by reason of true penalty, since this is imposed only in vindication of fault; nor by reason of rescission of acts, except in some case expressed by law. Hence that common saying: Law does not look backward (VI, n. 555; Suarez, *de Leg.*, l. 3, c. 14, n. 8).

But if a law established certain incapacities, for example by pronouncing those who have done this or that to be irregular, incapable of contracting matrimony, etc., the law would justly extend itself to past acts; because then it would establish not a penalty for past fault, but a condition, or quality required for the future. The same must be said if a new law urged the execution of an old law, or interpreted a law (Gousset, *Cod. civ.*, a. 2).

But whether law extends itself to internal acts, see n. 155.

3. Morally possible; both because a law concerning an impossible thing would turn to the ruin of the community, and because no one is held to impossibilities.

Hence: a) Acts of any virtue whatever cannot be prescribed, but only those which the public good demands, and which do not exceed the ordinary faculty of the community. b) Nor can all vices be prohibited by human law; but only the graver ones, from which, as St. Thomas speaks (1.2, q. 96, a. 2), it is possible for the greater part of the multitude to abstain, and chiefly those which are to the harm of others, without whose prohibition human society could not be preserved (cf. n. 446).

Therefore acts very arduous and heroic regularly cannot be prescribed to the unwilling: for this would be more unto ruin than unto edification. But if someone has freely undertaken a particular kind of life, arduous things which are proper to that kind of life can certainly be prescribed to him: thus enclosure is prescribed to nuns, and perpetual chastity to those initiated into sacred Order. Two cases are excepted, in which things especially arduous and heroic can be imposed on all by human precept: 1. When the common good demands this. Thus a Bishop in time of plague can prescribe to priests, even non-parish priests, that they not desert the city; similarly a military leader can prescribe to a soldier that he not desert his station. And the reason is that the common good prevails over the private good. 2. When the omission of some act would yield to the contempt of God or of religion (cf. n. 428 and 483); and the reason is that in that case the matter cannot be omitted without the law of nature itself being violated (I, n. 175; II, n. 26).

Hence: 1. If, in contempt or injury of ecclesiastical power, you are directly compelled to communicate with one to be avoided, to work on a feast day, or to eat forbidden foods on a fast day, you must refuse, even with grave harm to yourself, unless by protesting you can avert contempt and scandal. 2. If a heretical or impious head of a family were to say to his Catholic children: I will that on Friday you eat meats, and this in contempt of the Pope and the Church; the children ought

to respond: Father, know that we eat because you refuse to set other foods before us; for in this case it is lawful for us to eat them.

4. Useful, and a fortiori not harmful to the common good. The reason is that the legislator does not have the right of prescribing except for promoting the common good; nor can he, without a just cause, inflict any detriment on the liberty of subjects, which is the greatest of all natural goods.
5. Internal acts. Now the celebrated question concerning internal acts must be solved, namely whether the legislator can prescribe or prohibit such acts. The acts concerning which the discourse is held are either purely internal, not manifested outwardly, or mixed, joined with an exterior element.

In a threefold way an internal act is joined to an external act: either as a form constituting the external act in its moral being, for example, internal consent in matrimony, in entering upon a contract, contrition in annual confession, etc.; or as a cause with an effect: and thus he who prohibits homicide also prohibits the will of killing (I, 100; H. Ap., II, 17); or as a complement of an external act to be rightly completed, for example, the application of the Mass, meditations to be instituted in retreat (Lehmkuhl, *Cas. Consc.*, I, n. 85).

These things having been posited, 1. It is certain that both the civil and the ecclesiastical legislator can prescribe mixed internal acts; for example, an oath also internally formed can be required by a judge, annual retreats can be imposed by a Bishop (A. S. S., vol. 12, p. 609-612). The reason: this is necessary for the common good.

2. As to merely internal acts, it is certain that the civil legislator cannot rule these. The reason: social life, the external tranquility of the republic, which are the ends of States, by no means demand this. The praetor does not judge concerning internal things.

But it is disputed whether the ecclesiastical legislator can impose merely internal acts. We must distinguish between the power coming to the ecclesiastical legislator insofar as he rules a merely human society, and insofar as he presides over a divine-human one. In the first case, he uses proper, ordinary power; in the second, vicarious power. Now indeed: The ecclesiastical legislator most certainly can have dominion over merely internal acts: a) in matters of faith to be imposed (cf. Billot, *de Eccl.*, II, thesis XXII), indeed even in matters not directly touching faith but pertaining in a general way to instructing morals (pontifical directions); b) in sacramental judgment, where he can also recognize the innermost things; c) in the exercise of dominative power, which has much force in religious orders.⁶⁶ In all these things the ecclesiastical legislator uses vicarious power derived to him from another source.

To this can be reduced the condition of an internal act attached to gaining indulgences. Ordinarily, however, an internal act is not uniquely asked.

But can the ecclesiastical legislator, as a human legislator, using his own authority, rule internal acts? Some (Elbel, Balzerini) affirm, because the Church received unlimited power from Christ. But others more commonly and more probably deny, with St. Thomas (1.2, q. 91, a. 4). For since the Church cannot know merely internal acts, she cannot judicially urge their execution, nor punish omission; therefore neither can she prescribe or forbid them; for it belongs to the notion of a true society that the acts which it commands, it can of itself know, namely from the nature of the acts themselves, even if sometimes, per accidens, it can be impeded from such knowledge by some extrinsic cause (I, n. 100; ed. G., I, p. 79). Cf. Suarez, *de Leg.*, l. 3, c. 13; Franzelin, *de Trad.*, Th. XII; Lehmkuhl, I, n. 221; Noldin, I, n. 137; Genicot, I, n. 136.

Note. Suarez himself, although he holds the denying opinion, adds that a convincing reason is lacking why the Church cannot rule internal acts. As to St. Thomas, texts are cited by the adversaries which they explain in their own sense; cf. 1.2, q. 100, a. 9; 2.2, q. 105, a. 4.

Chapter II

On the Promulgation and Acceptance of Law

St. Alphonsus, I, 96 ff.; ed. G., I, p. 72; H. Ap., II, n. 4; Bouix, *de princ. Jur. can.*, p. 2, s. 2, c. 6; Bouquillon, *Theol. fund.*, n. 19; Berardi, *Theol. mor.*, I, 28.

⁶⁶Thus Suarez (*de Leg.*, l. 4, c. 12, n. 16); Schmalzgrueber (on l. 3, tit. 35, n. 67); Piat (I, p. 288). St. Thomas (2.2, q. 104, a. 5) and Lugo (*Resp. mor.*, l. 6, c. 7, n. 11) indeed think otherwise. Nevertheless, on May 3, 1914 (A. A. S., VI, p. 231), the Sacred Congregation for Religious declared: Religious Superiors can prescribe to their subjects, even in virtue of holy obedience, that they celebrate according to the intention established by the Constitutions or by the Superiors themselves.

156. Law, in order that it obtain its force, must not only concern apt matter, but must also be denounced to those by whom it is to be observed; for as long as it lies hidden, it cannot be fulfilled. But it is manifested through promulgation, to which sometimes, as a complement required per accidens, acceptance on the part of subjects must be added.

Article I

On the Promulgation of Law

157. DEFINITION. Promulgation is the public denunciation of a law made by legitimate authority to a community.

It is called 1. public, that is, with some solemnity; 2. made to the community; because law of itself regards only the community, and not particular persons as such, but only as parts of the community. Hence it differs from divulcation, by which namely the knowledge of a law already promulgated comes to several or all subjects.

158. PRINCIPLES. I. Promulgation is absolutely necessary so that law may acquire the force of obliging. This is evident from the Body of Law itself (Can. *In istis*, D. 4), where it is read that “laws are instituted when they are promulgated.” For law is a rule imposed on a community (cf. n. 109).

Hence it is inferred: 1. If someone knew that some law had been established, he would not be bound to observe it unless after it had been promulgated.

2. A doubtfully promulgated law does not oblige, unless it has already been received by use. Recall what was said n. 46.
3. He who invincibly does not know the promulgation made of a law is excused from fault before God by defect of knowledge; but not by defect of law, which, as promulgated, has the force of obliging. It is otherwise in the external forum, because knowledge of law, at least after some time, is presumed to have been divulged of itself; and therefore the burden of proving invincible ignorance lies upon him who brings forward the excuse of invincible ignorance (H. Ap., II, 22). And in this way the rule of law is to be understood: Ignorance of fact, not of right, excuses (V, n. 4).
4. II. The mode of promulgating laws is various in various regions, and depends on the judgment of the legislator, whether it is made through a herald, or by public affixing, or in any other way whatever. The reason is that no mode is determined by natural right; and, from the nature of the thing, that mode suffices by which knowledge of the law comes to at least the greater part of the community (I, n. 96).

Hence: 1. Episcopal laws (Benedict XIV, *de Syn.*, l. 13, c. 4, n. 1) oblige immediately from promulgation, and promulgation in the episcopal city (or in synod for the clergy) suffices, unless otherwise established by the bishop. 2. Civil laws oblige after promulgation has been made according to the custom of the provinces.

160. Pontifical laws. IT IS ASKED 1. What is the mode of promulgation of pontifical laws?

Resp. Distinguish. 1. If the matter concerns laws, or Constitutions, in the matter of faith and morals, it is certain that these do not need public denunciation: as soon as they become known, they oblige everywhere; because they contain nothing new, but are mere declarations of natural and divine right already promulgated.

2. If the matter concerns disciplinary laws, formerly there were distinguished laws which expressly required promulgation in the provinces, laws which were promulgated at Rome with the usual clauses and affixing in certain places, and laws which were published without clauses. But in the present discipline, namely from the year 1909, one ordinary mode alone is admitted (a special determination being excluded) of promulgating any pontifical laws whatever, from the Constitution *Promulgandi* of our Most Holy Lord Pope Pius X, given on September 29, 1908; and this mode is the insertion of the law or decree in the official Commentary which is entitled *Acta Apostolicae Sedis*.

These are the words of the Constitution: “But we will that Pontifical Constitutions, laws, decrees, and other decisions both of the Roman Pontiffs and of the Sacred Congregations and Offices, inserted in that Commentary by mandate of the Prelate from the secretaries or of the higher minister of that Congregation or Office from which they emanate, and published to the people, by this one and unique method be held as legitimately promulgated, whenever promulgation is needed, nor has it otherwise been provided by the Holy See” (A. A. S., I, p. 6).

IT IS ASKED 2. Whether pontifical laws oblige as soon as they are promulgated?

Resp. 1. If the time from which their observance urges is determined by the legislator himself, they by no means oblige before the established term.

Thus Pius IV for the decrees of Trent, Pius X for the obligation of the decree *Ne Temere*, for the introduction of the new Psalter, etc., established a special time.

Resp. 2. If the time is not determined, according to St. Alphonsus, pontifical laws do not oblige before two months, according to the norm of Roman law.

The reasons are: both because such a space of time even now seems required so that knowledge of the law can morally and in a certain way come to all regions, even distant ones; and especially because within that space no other is determined absolutely by authors (I, n. 96; ed. G., I, p. 75).

These things St. Alphonsus says. Benedict XIV (*de Syn.*, l. 13, c. 4, n. 2), with the common opinion, defends the other opinion: namely that pontifical laws oblige immediately after promulgation. But that the opinion which seemed more probable to St. Alphonsus now, after the publication of the official Commentary, remains probable, we would no longer dare to affirm. It is certain that the Holy See rejected as invalid the vows of those who had professed after the promulgation of the decree *Ecclesia Christi*, with no mention made whether the profession had been made after two months (A. A. S., II [1910], p. 36).

161. Note. Although with the promulgation of law properly so called there cannot be confused the means employed for the divulgence of the same law, such as insertion in the Bullarium, communication made by Bishops, the report of a person worthy of faith, and other similar things; nevertheless it must be admitted that solemn promulgation can sometimes be supplied by equivalent promulgation, which is had by fact, namely by use and the report of authors. On this matter St. Alphonsus notes (I, n. 106): "Not only pontifical Constitutions which have been solemnly promulgated induce the obligation of law; but also others which, from the use and consent of the universal Church, already for several centuries, are held as sufficiently promulgated and authentic."

Article II

On the Acceptance of Law

162. DEFINITION. Acceptance of law is the formal or virtual consent of the people (at least as to its greater and sounder part) to the observation of a duly promulgated law (I, 138).

163. PRINCIPLES. I. The acceptance of the people is not required for the essence and obligation of law. The reason is that if the acceptance of the people were necessary, the prince could no longer, when the people resisted, sufficiently consult the common good. Add that a power cannot be called legislative in the true name if the people could resist it at will. Hence deservedly was the proposition condemned: "The people does not sin, even if without any cause it does not receive the law promulgated by the prince" (proposition 28 from those condemned by Alexander VII).⁶⁷

Therefore: 1. In States, as they say, representative and democratic, the people, through its deputies, indeed participates in instituting laws, but ought to obey laws rightly published; otherwise the whole order of society would be overthrown.

2. A doubt having arisen, namely whether the law has been accepted, does not remove the obligation (I, n. 97, 6; III, n. 112). For the law possesses, and the presumption of obedience on the part of subjects also possesses, nor is the principle just stated weakened by this doubt.

3. Acceptance on the part of princes is not required in order that ecclesiastical laws oblige. Therefore the Church rightly rejected the royal placet (Vatican Council, III). It can happen, however, that the Church does not wish to urge the observance of her laws if, on account of the detraction of princes, their observance would become too onerous (cf. n. 201), or if their promulgation has been impeded (cf. Sweeny, *Theol. fund.*, n. 276, concerning the Royal Placet).

4. II. Defect of acceptance brings it about per accidens that law sometimes does not oblige. The reason is that laws whose observance is neglected finally pass into desuetude; or because they are revoked by the legislator expressly or tacitly.

Therefore a law DOES NOT OBLIGE (I, 139; H. Ap., II, 11 ff.): 1. If it has not been accepted for ten years. For such a space of time certainly suffices, with the legal consent of the prince standing, for prescribing against a law not yet introduced, as is commonly taught. Indeed, although it has already been accepted, but afterward for a continuous ten years has passed into desuetude, it is probable that it no longer obliges. This is certain among all, if the custom has endured for 40 years (cf. n. 265). See VI, n. 664, where the obligation of physicians to warn the sick concerning confession is treated.

⁶⁷Thus Cajetan, Valentia, Lessius, and Navarre taught, in Diana (see Viva, on this proposition).

2. If the greater and sounder part of the people has not admitted the law; for although desuetude has not yet been prescribed, and although the first non-acceptors of the law sin by the very fact that they reject it (I, 97), nevertheless the others are not held to the law; for the prince is presumed not to wish to bind these to observing what has not been received by the greater part, and therefore becomes either plainly useless or too onerous to the lesser good part.
3. If the law is difficult of observance, or contrary to prevailing custom, and besides, the circumstances are such that if they had been foreknown by the legislator, he certainly would not have made the law: which is judged from the decision of prudent men. Likewise, if the people had petitioned for revocation, and the prince does not urge observation, he is probably presumed not to wish the law then to oblige; otherwise, if he urged it, or from prudence kept silence (cf. n. 264, 1).
4. IT IS ASKED. Whether it is lawful for Bishops not to accept pontifical laws?

Resp. It is not lawful. For Bishops ought to obey the Roman Pontiff, not otherwise than the other faithful; indeed more than they, because they ought to furnish an example to them. Except, however, the case in which, on account of the circumstances of places, they judge that the law would be less accommodated to their Churches, or even harmful: in which case, they can and must set forth the reason to the Holy See. Meanwhile the Pontiff is deservedly judged not to wish to oblige before he has written back; but afterward all are bound to acquiesce in his definition (Benedict XIV, *de Syn.*, l. 9, c. 8).

Chapter III

On the Interpretation of Law

St. Alphonsus, I, n. 200; ed. G., I, p. 178; Suarez, *de Leg.*, l. 6, c. 1; Reuter, *Theol. mor. Prodrum.*; Sweeny, *Theol. mor. fund.*, n. 394; *Ami du Cl.*, 1903, p. 161 ff.

166. Interpretation of law, taken broadly, is the genuine explanation of law according to the mind of the legislator. Thus defined, it comprehends both interpretation properly so called and epikeia: concerning these we shall discuss in a twofold article.

Article I

On Interpretation Properly So Called

167. DEFINITION. Interpretation, strictly taken, is a clearer exposition of those words which are obscure or ambiguous.

DIVISION. Interpretation of law is distinguished in many ways:

1. By reason of object, one is declaratory, or comprehensive, which declares obscure words of the law; another is extensive, which extends the law to similar cases; another finally is restrictive, which confines the law to certain designated cases, although it seems general, for example if a prince declares that the word clerics extends to tonsured men alone, but not to those who have ascended to higher orders.

Comprehensive interpretation is named purely such. It is in the law from the beginning: for example, if the discourse is about sons, even illegitimate sons are comprehended under this word. Extensive interpretation is called not purely such, because the sense is not clearly imbibed in the law, for example, that under the name of father, even grandfather, under the name of dead, even civilly dead, ought to be understood.

2. By reason of cause, one is authentic, another usual, another doctrinal, concerning which one must treat especially.

§ 1. On Authentic Interpretation

168. DEFINITION. Authentic or juridical interpretation is that which is made by the legislator himself, or by his successor, or Superior. It is called authentic, or brought forth with authority, because, in making it, the Superior uses the power of jurisdiction. It is also called the declaration of the legislator (H. Ap., II, n. 73).

Hence it is inferred: 1. Interpretation is not authentic, but doctrinal, if the Superior only declares his mind as a private person.

2. Interpretation can be made by the legislator both through himself and through others to whom this office is committed. The Sacred Congregations of Cardinals, by delegation and mandate of the Supreme Pontiffs, exercise such an office of interpretation.
3. PRINCIPLE. Authentic interpretation has binding force, without new promulgation, if it is comprehensive and restrictive; after new promulgation, if it is extensive.

The reason of the first: Such interpretation is not a new law, but has been imbibed in the law from the beginning: therefore in order that it oblige, it suffices that the declaration be divulged.

The reason of the second: It is not clearly present in the previous law; from the argument it could indeed be drawn from the law, but it was not drawn firmly. Therefore the law remained doubtful. Hence new promulgation is necessary. See St. Alphonsus, III, n. 1027; ed. G., II, p. 408; H. Ap., II, 74.

Note. Nevertheless authentic divulcation, in the case of comprehensive and restrictive interpretation, is always required: namely so that judges can safely either protect the exempt or proceed against those resisting.

What therefore must be thought concerning the various decrees, sentences, or decisions of the Roman Congregations?

Resp. 1. Decrees edited for the universal Church and rightly promulgated obtain the force of law; for they are not promulgated unless the Pontiff commands.

But particular decrees are at least a norm of how one may act fittingly, for the whole Church. They found a truly probable opinion.

2. Sentences, of whatever nature they may be, bind those to whom they are directed. But judicial sentences, of themselves, are not to be extended to similar cases: for they are various according to the variety of circumstances, nor is it always easy to know what circumstances impelled the sentence; whence a transfer to similar cases could be fallacious.

Nevertheless, uniformity of decisions in similar cases induces the style and practice of the Curia. But the practice of the Curia is held as a very strong argument in law.

3. Extensive declarations or decisions, which establish new right, need promulgation in order that they have the force of law: for they follow the nature of law. But as to merely comprehensive declarations of some universal law, the opinion today common holds that the force of law is present in those declarations, provided there is certain evidence concerning their authenticity. The reason is that new laws need promulgation, but not declarations concerning laws already promulgated. "Declarations of this kind," says St. Alphonsus (*2 El. q. reform.*, n. 2; *Istruz. prat.*, II, 39), "which have already been universally divulged in the Church and thus promulgated in fact, by the use of many years or by the report of authors commonly referring to them, these sufficiently bind all the faithful." And thus is the practice of the Roman Curia (cf. Bouix, *de Cur. Rom.*, P. III, c. 7; Palaus, tr. 3, disp. 5, punct. 3, § 1, n. 2).

Those authors think less rightly who suppose that declarations, even comprehensive ones, of some universal law of themselves need promulgation, led by this reason, that while controversy stands among doctors, the universal law is not perspicuous, and therefore declarations of the Roman Congregations truly establish new right. Cf. Genicot, I, n. 137, and D'Annibale, I, n. 184, note 5. They indeed admit our opinion in the case in which Roman declarations have already been universally divulged in the Church and received by use.

4. Restrictive declarations do not need promulgation: for by them, far from a new right being established, there is derogated from a statute whose partial obligation is removed; but any obligation whatever ceases as soon as there is evidence concerning the will of the legislator.

Note. The decrees both of the Congregation of the Holy Office (or Universal Inquisition) and of the Congregation of Sacred Rites have special force. For:

1. The president of the Holy Office is not some certain Cardinal, as in the other Congregations, but the Roman Pontiff himself. Hence those things which are done through the Inquisition can more easily vindicate for themselves the authority of the Pontiff than those things which are done through the other Congregations. Nevertheless, they are not marked by the prerogative of infallibility through the mere presence of the Roman Pontiff as President of the Inquisition, or even through the approval itself; but only then when, approving in specific form, he has ordered some decree, which for the rest treats a matter to be infallibly decided, to be directed to the universal Church in his own name, and has taken care that it be promulgated. For infallibility is an altogether personal prerogative of the Roman Pontiff.

2. The Congregation of Sacred Rites, as we said n. 140, probably even when the Roman Pontiff has not been consulted nor approving, has the power of issuing decrees and interpreting laws. Yet from this do not infer that all responses of the same Congregation are laws, nor that all decrees are universal (cf. Collect. Gardell. 3, n. 5465).

But particular decrees which regard Rubrics pertaining to the universal Church obtain the force of a general decree or of City and World, so that they oblige everywhere, notwithstanding any custom to the contrary even immemorial (S. R. C., January 8, 1914; A. S. S., vol. 36, p. 428). See what is said below n. 1638.

3. Pius IV had devolved the office of authentically interpreting the laws of Trent to the Sacred Congregation of the Council alone. But now any Roman Congregation can interpret it in competent matter; indeed also the Tribunal of the Sacred Rota and the Apostolic Signatura, but these only in a particular case (A. A. S., III, p. 99).

§ 2. On Usual Interpretation

170. Usual interpretation is called that which has been received by use and custom. This can be various in various places, although the matter concerns a universal law, as will be evident from the things to be said concerning the law of fast. But doctors commonly assert that laws are to be interpreted according to the custom of the place, even if the words of the law must be taken less properly.

An interpretation of this kind is equivalent to an authentic one, and, if all the conditions are present which are required for constituting a legitimate custom, it produces altogether the same obligation. Hence the axiom: Custom is the best interpreter of laws (cf. n. 261). It is equivalent only to doctrinal interpretation if the custom has not yet been prescribed, or confirmed by the tacit consent of the legislator (I, 109; H. Ap., II, 82).

Note. To usual interpretation is referred JUDICIAL interpretation, or the practice of tribunals, whether civil or ecclesiastical, when this is constant and uniform; for, although the sentence of a judge makes right only between the litigants, nevertheless the uniformity of decisions induces a certain custom, to which the consent of the legislator tacitly gives support (Bouix, *de Princip.*, P. II, sect. 6, c. 1, § 2, 4).

§ 3. On Doctrinal Interpretation

171. I. Doctrinal interpretation is a simple and private declaration of the mind of the legislator (I, 200).

This, of itself, does not obtain the force of law, since it is not made by one who has jurisdiction. Yet if almost all doctors agree in the interpretation of a law, moral certitude arises from this; the highest probability arises if very many and grave doctors agree; but if doctors, in almost equal number, go off into diverse interpretations, they must be weighed rather than counted. Recall what was said n. 63 ff.

- II. It is lawful for any learned man to interpret laws doctrinally, provided it has not been prohibited by the legislator, and provided this is done according to the more received rules and the sense of the doctors. For since doubts often occur, and the legislator cannot always conveniently be approached, it was necessary to grant such a faculty to the wise.

Thus interpretations concerning the decrees of the Council of Trent are prohibited to private persons by Pius IV, as we noted above. Nevertheless, several doctors say that, by force of this prohibition, interpretations are not prohibited which would be made incidentally in some book, or orally or in writing, provided they are not committed to print; but only those which are made expressly through glosses, scholia, and commentaries given to print. For use has interpreted such a prohibition in this way (H. Ap., II, 75).

- III. The rules of doctrinal interpretation are chiefly the following:

1. Attention is to be given to the PROXIMATE END of the law, or to the mind of the legislator. For that end is as it were the soul of the law, but the words are like its body.

Hence, if there is evidence concerning the mind of the legislator, one must stand by this more than by the bare words, as is clear from the condemnation of the Pharisees. Now the end of the law is understood both from its object and from the circumstances of times, places, and persons, and especially from the reason placed in the law, which namely impelled the Superior to make the law.

2. Attention is to be given to the FORM of the law, that is, to the manner in which it is expressed and promulgated.

In doubt, the words of the law are to be taken according to their proper sense, whenever something absurd or inequitable does not follow from this. But the proper sense can be either natural, such as is drawn from common use, and this is to be

followed in penal and preceptive laws; or civil, which by legal fiction agrees with the words, for example, when under the name of legitimate son one who has been legitimated is also accepted, and this sense can be accepted in favorable matters. In a law expressed in general words, an exception is not to be made without a just and evident cause; for where the law does not distinguish, neither ought we to distinguish. But if something inequitable or absurd would follow from this, this other rule has force: "In order that the absurd may be avoided, the broadest interpretation ought to be made"; so that, if there is need, one must flee to an improper and metaphorical sense (cf. Porpora, tr. I, n. 364).

3. Attention is to be given to the MATTER of the law. For in odious matters a strict interpretation is to be made, in favorable matters a broad one. Understand this with the propriety of words preserved, whether natural or civil, as was explained above.

But to know whether a law is odious or favorable, attention must be given TO ITS PRIMARY MOTIVE (I, 200). Odious is whatever imposes an obligation or penalty, or injures the right of a third party, or is opposed to common right, even if this yields to the favor of another. Hence positive precepts, censures, irregularities, impediments of matrimony, exemptions, dispensations, privileges against the law, incapacities in civil law, are of strict interpretation, nor ought they be extended to cases not expressly determined. Favorable is judged whatever indulges liberty, or grants grace, without detriment of private persons, or of the community, or of right itself. Hence privileges which are beyond the law, and all rescripts of grace, are of broad interpretation (cf. n. 253, 3).

Sometimes, however, the law must be extended even as to odious things, if namely the primary motive is the granting of favor, as for example in the law made against those striking a cleric (cf. n. 1329); and similarly it is to be restricted as to favors, if the primary motive was the imposition of a burden (Salmant., *de Leg.*, c. 4, n. 31). Cf. St. Alphonsus, *de Privil.*, n. 7.

172. Questions. QUERY 1. Whether a law ought to be extended from case to case on account of parity of reason?

Resp. 1. If the reason is not the same, but only similar, the doctors teach that extension is not to be made, unless the case is expressed in the law only for the sake of example.

Hence it is that in law generally it is not lawful to argue from parity, indeed not even a fortiori: for not the reason of the law, but the will of the legislator manifested to subjects, has the force of law. Hence that saying: the reason of the law is not the law. Thus suspension, which by the statute of a Bishop is inflicted on clerics guilty of drunkenness, does not affect those who have violated chastity; although impurity involves in itself a greater sin than drunkenness.

2. If the reason is not only similar, but adequately the same, namely in such a way that the legislator would have to be accused of imprudence or injustice if the law were not extended, extension is to be made; for then the case not expressed must rather be said to be comprehended in the law than the law to be extended to it, and the rule has force: "Where the same reason is present, there the same disposition of law runs."

This happens: 1. in correlatives, as in husband and wife: for what has been sanctioned concerning one, for example, as to rights with respect to matrimony, is judged also concerning the other, if the same reason proceeds for each; 2. in things equated, as are eggs and milk foods in the law of fast; election, presentation, provision, in benefices; 3. in connected things, as are deacon and subdeacon; 4. in contained things: thus he who can make a testament can also make legacies. Likewise a law which decrees something on account of more frequent use also comprehends a less frequent case. Hence the law of St. Pius V, permitting nuns to go out from the monastery on account of fire or epidemic, is judged to grant the same on account of flood and the invasion of enemies (I, 200; H. Ap., II, 78).

QUERY 2. How are condemned propositions to be interpreted?

Resp. St. Alphonsus (III, 760): "Regularly speaking, condemned propositions are to be understood as they lie, and in the rigorous sense intended by their authors."

It is said 1. as they lie, that is, separately from the context, when the words are clear and perspicuous; 2. in the intended sense, when the words of the proposition are obscure or ambiguous; 3. rigorous, that is, not beyond the propriety of the words, because we are involved in odious matters. Therefore they never receive extensive interpretation, unless an evident reason demands it. Cf. Viva, *Thes. damn.*; Reuter, l. c., n. 19.

Article II

On Epikeia

173. DEFINITION. "Epikeia is the at least probable presumption that the legislator, in some circumstance of things, did not will to oblige" (H. Ap., II, 77).

In this it differs from simple interpretation, that the latter elucidates obscure words of the law; but epikeia declares the mind of the legislator against the open words of the law.

I. There is place for epikeia if the law would otherwise be rendered either harmful or too onerous (I, 201; cf. 98, 99, 175). For in the former case the Superior could not oblige, hence epikeia is necessary. In the latter case, it is justly and prudently presumed that the Superior did not wish to oblige, although by strict right he could have done so: wherefore epikeia is then lawful, even if not always necessary, as if the matter concerns private right, which one doubting can renounce. Thus he is excused from hearing Mass who fears a notable loss of goods (cf. 223, 248). Read Salmant., tr. XI, c. 5.

Nevertheless authors add that the Superior must be approached beforehand, if this can be done. See Noldin, I, n. 144; Gopfert, I, n. 96, where there are many useful things.

174. II. Epikeia (defined broadly as above) has force not only in human laws, but also in natural laws, where the action can, from circumstances, be stripped of malice (I, 201).

Thus natural law dictates: You shall not commit theft; yet to escape death, it is lawful to take another's thing (cf. n. 129).

These things will be understood more fully from what is to be said concerning causes excusing from the law and concerning the cessation of law from within (n. 221, 256). Meanwhile it is useful to note that epikeia (or equity) is an act of a certain more sublime justice, better than strictly legal justice, which observes the words of the law (St. Thomas, 2.2, q. 120, a. 2, ad 2). Hence the adage of law: "In all causes, the reason of equity ought to be stronger than that of strict right," and that of Sacred Scripture: Do not be just overmuch (Eccles. 7:17); All your commandments are equity (Ps. 118:172). But equity is justice tempered by the sweetness of mercy, as St. Cyprian defines it (in Ferraris, v. Law, a. 5, n. 34).

Chapter IV

On the Obligation of Law

St. Thomas, 1.2, q. 96; St. Alphonsus, I, 140; ed. G., I, p. 124; Suarez, l. 4, c. 17-20; Elbel, I, 292; Aertnys, I, 140; Genicot-Salsmans, I, n. 106.

175. After the treatment of those things which regard the institution, promulgation, and interpretation of law, one must treat of the very effect of law, or of the obligation of law. Three things here come to be investigated: 1. what kind of obligation law induces; 2. who are subjected to the obligation of law; 3. how this obligation is to be satisfied.

Article I

What Kind of Obligation Law Induces

We shall treat: 1. of the obligation of law in general; 2. of the obligation of penal law; 3. of the obligation of invalidating law; 4. of the obligation of law founded on presumption.

§ 1. On the Obligation of Law in General

176. DEFINITION. The obligation of law can be defined: "A moral necessity binding to the placing or omission of an act, so that moral evil, that is, sin, or at least penalty, may be avoided" (cf. n. 109).

DIVISION. The obligation of law is direct, or per se, and indirect, or by consequence. Direct obligation tends to those things alone which are indicated in the law. Indirect obligation comprehends: means to the law, and these easy and ordinary, and the removal of impediments; for example, to avoid dangers, not to induce others to violating the law, etc.

Concerning these latter things there will be discourse in their own place; here only concerning direct obligation.

177. PRINCIPLES. I. Any law whatever obliges in conscience to something. This is of faith as to ecclesiastical laws, as is evident from Trent, Sess. VII, on Baptism, Canon 8: "If anyone shall say that the baptized are free from all the precepts of holy Church... let him be anathema." But as to civil laws, it is altogether certain from what was said above n. 148.

It is said 1. Law, that is, every true precept of the legislator, but not a mere counsel, exhortation, or admonition of the legislator, of which sort there are not a few improperly so-called laws in canon law, as St. Alphonsus notes, VI, n. 518; ed. G., III, p. 529-530.

2. Any law whatever, whether it is merely penal or invalidating, since even these laws oblige to something in conscience.

A merely penal law obliges one to undergo the penalty if it is imposed on the delinquent; and it obliges the judge to impose it as it is determined by law. An invalidating law similarly obliges to something, namely at least to this, that someone not defend an invalid act as valid.

3. Obliges. The reason is that every law essentially supposes in the legislator the right of prescribing and the will of obliging. But natural and divine right dictate that obedience must be given to such a legislator.

Nor is it required, in order that it oblige in conscience, that the legislator expressly intend obligation in conscience; but it suffices that he intend truly to command, since this obligation in conscience necessarily follows from command (Bouquillon, *Theol. fund.*, n. 133 and 223).

4. Obliges to something, that is, either to an act absolutely, whether to be placed or omitted; or disjunctively to the act or penalty; or to both at the same time; or only to a certain mode of acting, so that the act may obtain value and firmness. In the first case, the law is called purely moral or preceptive; in the second, purely penal law; in the third, mixed law; in the fourth, invalidating law.

Note. Since these things have force for any law whatever, by no means must credence be given to those who affirm that modern legislators do not bind conscience. In many things indeed they recede from God, and publicly protest that they are ignorant of God and conscience. Yet from this manner of speaking do not infer that such legislators, in those things which are truly useful and necessary for the common good, regard good morals or the mutual rights of citizens, do not bind conscience. Cf. Konings, c. 3, a. 1, n. 178.

178. II. Human law obliges under light matter in light matter; but under grave matter in grave matter; unless from the circumstances of things, there is evidence that the mind of the legislator was different. The reason is that the gravity of obligation depends primarily on the very matter of the law, so that for grave obligation grave matter is always required; for grave obligation in matter altogether light would be unto destruction, not unto edification; and therefore it would be opposed to that property of law which prescribes that law be conducive to the common good.

It was said: unless there is evidence that the mind of the legislator was different; for the gravity of obligation, according to the more probable opinion, depends secondarily on the will of the legislator. For just as he could in no way oblige, by not prescribing, so he can oblige under venial matter only, even in a grave matter. And this is sometimes expedient (I, n. 143; H. Ap., II, 14).

179. From these things you resolve: 1. "When the matter is altogether light, the one transgressing does not sin mortally, even if the Superior has prescribed under mortal sin, ... for example, that no one break silence, that no one eat a grape, that he close the door, etc.; because it is a small matter and incapable of so great an obligation. Nor does God himself, in small matter, oblige under mortal sin" (I, 141).
180. It would be otherwise if the matter otherwise light became grave by reason of circumstances, for example, of scandal, of a great common good, or of the end intended by the legislator. Thus abstinence from an apple in paradise, although small in itself, was nevertheless most grave from the circumstance of the end; thus the pouring of water into the chalice at the Offertory is reputed so grave that no excusing cause is given (Noldin, III, n. 109).
181. Contempt, if it is truly formal, namely if someone contemns the law as law, the Superior as Superior, "in any matter whatever is always a mortal sin" (I, 142). Except if someone contemns the thing prescribed, because it is esteemed little, or the Superior, because he is indignant against him. For then, of itself, grave sin is not present by reason of contempt; but it can be present by reason of great anger or rash judgment. But frequency of transgressions does not necessarily involve contempt of the law, says St. Alphonsus, IV, n. 161; ed. G., II, p. 588, citing St. Thomas (2.2, q. 186, a. 9, ad 3).
182. IT IS ASKED. How can it be known that a law obliges under mortal sin?

Resp. The chief signs from which it can be known are the following: 1. If the matter is grave, and there is no evidence to the contrary concerning the will of the one prescribing. 2. If the precept is expressed in words having great force, for example: we prescribe under grave matter, under the indignation of God, in virtue of holy obedience, from all power, altogether, inviolably, and similar words. Simply imperative words: we will, we prescribe, do, abstain, and others of that kind, are ambiguous; wherefore from circumstances one must argue whether they impose a grave or light obligation. 3. If a grave penalty is added to an ecclesiastical precept, for example, the penalty of perpetual exile, excommunication,

irregularity, ecclesiastical interdict, total suspension, or suspension from office or benefice for a notable time, for example, for a year. This nevertheless is understood if the censures are *latae sententiae*; otherwise if they are *ferendae sententiae*, according to the more probable opinion, or also if the law is merely penal (cf. n. 182 and 1263). 4. If use and custom among the skilled and timorous thus bear; because custom is the best interpreter of laws (cf. n. 337). This especially has place as to rubrics and fast. Cf. I, 144-146; VII, 33; H. Ap., II, 15.

Sometimes, however, although the Superior brings forth grave threats, it does not always follow from this that the matter about which it is treated obliges under grave matter: for example, only under light matter is there an obligation of not receiving tonsure unless confirmation has preceded, and nevertheless the Sacred Congregation of the Council severely prohibits that such a one, not rightly promoted, ascend to other things, etc. Cf. n. 1919.

§ 2. On the Obligation of Penal Law

Cf. St. Alphonsus, I, n. 145 ff.; ed. G., I, p. 126; Salmant., tr. 11 *de Leg.*, c. 2, n. 53; Suarez, l. 5, c. 4; D'Annibale, I, n. 207; Lehmkuhl, I, n. 310; Noldin, I, n. 160; Biederlack, *Zeitschrift für kath. Theol.*, 1899, p. 155 ff.; V. Gestel, *de Just.*, p. 140.

181. DEFINITION. Penal law is that which establishes a penalty against delinquents without prescribing that something be done or omitted.

Therefore it is that law which directly imposes no obligation of doing this or that; yet he who is found delinquent can be punished, and if he is punished by legitimate authority, he must in conscience undergo the penalty as justly imposed; indeed, after sentence, he must execute by himself the imposed penalty, or at least not positively oppose it, if it were too harsh (cf. n. 2311). Therefore from the transgression of penal law there arises a merely juridical fault; from the repudiation of the penalty, a moral fault.

The penalties which can be incurred are manifold: 1. By reason of the thing which constitutes the penalty, there is given a) a positive penalty, which consists in fact, that is, which is completed by the work either of the delinquent, and is called active; or of another, in which case it is named passive, such as confiscation of goods, exile, etc. (I, 148; H. Ap., II, 24); b) a privative penalty, which consists in right, whether it deprives of some right sought or acquired, for example, office, benefice, right of patronage, jurisdiction, etc., or takes away the right or canonical or natural capacity of doing, acquiring, contracting, etc., in which case the penalty is accustomed to be called incapacitating. 2. By reason of origin, there is given a conventional penalty, which, when something, for example, an office or benefice, is given to someone under at least the tacit condition that he do something, but this has not been performed, takes away what was given, as if the condition had not been fulfilled. "Thus, for example, a beneficed cleric not wearing the habit is deprived by the very fact of the privilege of the forum" (I, 149). But such a penalty is either reduced to incapacity, or induces the nature of a pact. 3. By reason of application, there is had a penalty *latae sententiae*, which is inflicted by the law by the very fact of the admitted fault; and *ferendae sententiae*, which is established to be inflicted on the guilty by a judge (VII, 6). That judge, who is not the legislator, cannot of himself lessen this at will, unless he has received power also for this (cf. Salmant., *de Leg.*, c. 2, n. 72 ff.). He would sin against distributive justice, and if he increased the penalty, against commutative justice, as is clear.

DIVISION. Penal law is either merely penal or mixed.

Merely penal is that which we defined above. Mixed prescribes or prohibits something, and at the same time decrees a penalty for transgressors. Therefore mixed penal law superadds to the obligation of accepting the penalty a true obligation of doing the thing, or a strict prohibition of omitting the thing, both of which seriously bind conscience (I, 145, 147).

182. PRINCIPLES. I. Nothing prevents merely penal laws from being established. The legislator indeed must promote the common good, and in this consists the strength and tendency of law, that acts which are necessary for the common good be placed, but those which would bring harm to the republic be omitted. Yet from these things it does not follow that the legislator necessarily

and always ought directly to prescribe or prohibit, so that conscience is immediately bound. It suffices that those acts conducing to the common good, considered generally, with the added penalty to be undergone, are sufficiently placed in security, and that the common good is promoted in a general way.

Moreover, it is not of the essence of law that it oblige in conscience to the act; it suffices that in conscience it oblige one to accept the penalty, if it is imposed. And if it is objected that every penalty supposes fault, it is pleasing to answer that every penalty supposes at least juridical fault, according to that saying of St. Thomas (2.2, q. 108, a. 4): Sometimes someone is punished without fault, yet not without cause.

183. II. There are given, in both rights, merely penal laws, and there are given also mixed laws; the former oblige only under penalty, the latter under penalty and under fault.

We are not speaking of natural law, which always obliges in conscience, since it concerns things necessary and intrinsically good or evil.

1. THE FIRST PART IS PROVED: a) In ecclesiastical right merely penal laws are very rarely found; because ecclesiastical laws intend to procure the common good rather through the sanctification of private persons and the firmness of discipline; whence they directly touch conscience.

Nevertheless, in certain Orders there are given rules and constitutions whose mandates are merely penal, which will be clear from the context or from the constant usage of Superiors. Yet from these things do not infer that all things which are noted in rules are merely penal. For it is evident that ordinances which are referred to vows or evangelical precepts, for example, concerning charity to be fostered, are mixed laws which oblige religious in conscience.

To the rules of religious Orders are referred the constitutions by which seminaries or other colleges are governed. Likewise the statutes of confraternities or pious congregations.

- b) As regards civil right, the opinion of some, as being too general, having been rejected, we say that many merely penal laws are given there, for example, laws which impose the payment of indirect taxes, govern hunting, fishing, the cutting of wood, entry into military service; and in general all ordinances whose end can sufficiently be obtained on account of fear of the penalty (cf. n. 879, 904).

Nevertheless, all civil laws which confirm natural or divine law are necessarily mixed, such as laws concerning the sanctification of the Lord's day, concerning contracts, and concerning public offices; laws by which certain rights are attributed to certain persons, for example, to authors in relation to works invented by their own genius (cf. n. 855).

2. THE SECOND PART IS PROVED: The very definition clearly supports this our affirmation. For it is evident that all things depend on the Legislator, who, just as he can bind even in grave matters only under venial sin, so at his pleasure will be able to prescribe certain things only under penalty, or under fault and penalty (I, 147; H. Ap., II, 16).

From this, however, it does not follow that the transgressor of a mixed law is always, by the fact itself, obliged to undergo the penalty (see n. 184).

HOW, HOWEVER, WILL YOU KNOW THAT LAWS ARE MERELY PENAL?

Resp. 1. From the very words of the law, for example, if it is expressed disjunctively: Do this, or pay this; likewise, if an act is prohibited in this way: He who shall have done this, let him pay the penalty; provided, however, that the nature of the penalty inflicted does not suppose fault, as in excommunication, nor does the good of the republic demand an obligation in conscience. 2. From the declaration of the legislator,⁶⁸ namely if he says that he does not will, or did not will, to oblige consciences. 3. From the object of the law, which sufficiently intimates that the ordinance of the superior intends rather an external polity, for example, statutes of pious congregations. 4. From introduced custom; for just as the obligation of law can cease totally, so also it can cease partially, as to the obligation of conscience, when common usage, and especially the usage of the timorous, has been considered. "Hence laws of towns prohibiting under penalty the cutting of wood or herbs, fishing, hunting, do not oblige under fault; for thus custom holds" (I, 145). St. Alphonsus, with the common opinion, thinks the same concerning civil laws which prohibit games of chance and other games (H. Ap., X, n. 217). The timorous think the same concerning laws in which an exorbitant penalty is indicated as to be undergone for delicts not so grave in themselves; for there must be proportion between fault and penalty (III, 616). Cf. Bucceroni, n. 228.

184. IT IS ASKED. What are the obligations of him who ought to undergo a penalty?

Resp. A distinction must be made: 1. If the penalty is *ferendae sententiae*, he is held to nothing before the sentence of the judge, who will promulgate the mandates of the prince.

2. If the penalty is *latae sententiae*, a subdistinction must be made: a) A merely privative penalty, for example, irregularity, excommunication, privation of the right of making one's own fruits one's own, privation of the privileges of the forum, will immediately press upon the guilty person, as the usage of the Church explains, and binds him.
- b) A positive penalty, or one to be equated with it, for example, privation of a possessed benefice, of active and passive voice, deposition from office, will hold the guilty person only after a penal sentence, or a sentence declaratory of the crime. The reason for these things is: it is indeed fitting that the Church, through penalties *latae sententiae*, can keep her own from hidden delicts; but these penalties ought not to be too arduous. A merely privative penalty, which requires no action of the delinquent upon himself, certainly is not judged too arduous; but a positive penalty

⁶⁸ Assertions of modern legislators, by which they pretend to be ignorant of God and conscience, indeed make the number of penal laws grow. Nevertheless, laws which regard good morals, or the rights of citizens to be protected, will always oblige in conscience, as we have already said.

is reputed too arduous. Hence, if the matter concerns a positive penalty, although the law, in set words, declares that “the penalty is incurred by the fact itself, and without awaiting any declaration of a judge,” this must be understood of the declaration of the penalty, but not of the sentence declaratory of the crime, which, even in this case, is necessary so that the penalty can be applied to the guilty person. “This is confirmed from chapter *Secundum, de haereticis*, in the Sixth, where heretics, although they are deprived by the law itself of their goods, nevertheless are not bound to hand over the goods before sentence, as is contained in the same text” (I, 148; H. Ap., II, n. 25). Cf. also what the Holy Doctor has, III, n. 665; ed. G., II, p. 140; *Conf. dir.*, II, 7; Vecchiotti, I, 3, § 65.

- c) If the penalty is conventional, for example, between architects and possessors of houses, a twofold opinion is given. One says that the obligation of undergoing the penalty stands before sentence, because thus all things were ordered from the beginning. The other wills that the determining sentence can be awaited, because the contracting parties are presumed to have contracted under this limitation, namely so that before payment all things may be justly defined. Since each opinion is probable, do not compel those resisting to pay anything before sentence; but once sentence has been given, allow that something be paid only when the other has truly sought it (I, n. 150).

Note. Whether and when ignorance, or doubt, excuses from a penalty enacted by law, we shall say below, n. 219, where we treat of causes excusing from law, and n. 1269, 1273, where we treat of censures.

§ 3. On the Obligation of an Invalidating Law

Suarez, *de Leg.*, l. 5, c. 19; De Lugo, *de Jure et Just.*, disp. 22, s. 9, n. 249; Reuter, n. 231.

185. DEFINITION. An invalidating law is that which establishes that some act, otherwise firm and valid, when certain conditions occur, is infirm and invalid, or at least to be invalidated.

It concerns vows, oaths, contracts, benefices, religious profession, matrimony, absolution from censures, delegation of jurisdiction, election of a prelate. Cf. n. 1051.

It differs 1. From a law simply prohibiting; because this makes the act which it forbids illicit indeed, but not invalid. To this point belong the words of right: Many things are prohibited from being done, which, if they shall have been done, obtain the firmness of force (c. 16, *de Regular.*).

2. From a law not assisting an act; which neither confirms nor weakens an act, some contract, for example, a game, and leaves such a thing as it was by force of natural right; and therefore obliges a judge only to this, that in the external forum he take no account of that act (Bouquillon, *Theol. fund.*, n. 149).

DIVISION. An invalidating law is distinguished in many ways:

1. By reason of the thing which is affected, one is directly invalidating, when it pronounces an act absolutely void, for example, a donation made to an incapable person; another is indirectly invalidating, when it rescinds the instrument of an act not duly made, that is, when it prescribes a certain form, or solemnity, to be observed in the act, so that without such form the act does not subsist.
2. By reason of the obligation induced, one is purely invalidating, another at the same time prohibiting, according as it either only rescinds the act, or at the same time also prohibits it (cf. the things soon to be said, n. 189).
3. By reason of application, one is invalidating by the fact itself, when by the law itself the act is declared null, so that the sentence of a judge is not required, for example, clandestine marriage; another is *ferendae sententiae*, when the act is pronounced only to be invalidated through the sentence of a judge, for example, a contract entered upon by a minor to his own detriment.
4. By reason of the mind of the legislator, one is penal, when it assigns invalidation in hatred of the transgressor, for example, the invalidation of the conferral of a benefice on account of the crime of simony; wherefore if fault was lacking, for example, on account of fear or ignorance, no invalidation is given. Another is purely invalidative, when it is introduced not in hatred of anyone, but on account of the common good, for example, a law invalidating contracts, or testaments, or marriages, when the form prefixed by law has not been observed. Hence this invalidation is called legal, and obtains, even if invincible ignorance is present. Sometimes, however, invalidation is legal and penal at the same time, for example, in the impediment of crime (n. 2038, Question).
5. PRINCIPLES. I. Any supreme legislator can make invalidating laws. The reason is, because this is required for the common good; for otherwise frauds, dangers, and other grave inconveniences could not sufficiently be impeded and driven away from human society. Indeed, as regards the Church, it is of faith that she received from Christ

the Lord the power of making laws of this kind concerning sacred things, for example, concerning the contract of matrimony (Salmant., *de Leg.*, c. 2, n. 87).

Moreover, neither is the power of the civil legislator to be doubted, on account of the reason adduced. The question is only whether in fact he has used this power. The matter in each right is controverted on both sides as probable.⁶⁹

Moreover, because an invalidating law, as being odious, is of strict interpretation; therefore, before sentence has been given by a judge, it is not judged to oblige in conscience; whence in practice one must stand for the possessor, until the sentence of the judge shall have established otherwise (cf. n. 1054).

187. II. Every law which commands, or permits, the invalidation of an act to be made, has force only after the sentence of the judge. This is clear from the terms themselves.

Hence: 1. An act, so long as it is not invalidated, remains naturally valid, even if the invalidation is maliciously impeded, whether by the author of the act, or by the judge, or by any other person whatever. Thus, for example, he who in good faith contracted with a minor can use the thing contracted, until the contract is rescinded by the sentence of the judge. Likewise, a vow or oath rightly emitted by a religious is valid and obliges, as long as it has not been invalidated by the Superior (IV, n. 48).

2. Once an act or contract has been rescinded by the sentence of a judge, it is not lawful to use it; because, even if there were doubt concerning the sense or concerning the justice of the law commanding invalidation, nevertheless there is no doubt concerning the power of the judge in such a case. Wherefore obedience must certainly be given to him when commanding (I, n. 99).

3. III. A law which certainly invalidates an act by the fact itself has invalidating force before sentence, and obliges in conscience to all other things which intrinsically follow from the invalidation. The first part is clear of itself. The other is proved from this, that from such a law the act is null, and consequently confers no right. For when the foundation is taken away, all things which rest upon it fall down (Suarez, *de Leg.*, l. 5, c. 20, n. 13).

Hence: 1. If that act consists in the acceptance or acquisition of some thing, there follows from the law the obligation neither of using nor enjoying that thing, as if it were one's own. 2. If the matter concerns matrimony, it is not lawful to approach the spouse, nor

to usurp other marital rights. 3. Similarly, if the matter concerns religious profession, it is not lawful to place acts proper to religious.

It was said: A law which certainly invalidates; for in civil matter it is not always easy to discern whether a law is truly invalidating or merely prohibiting; and if it is invalidating, whether it is invalidating before sentence, or only after the sentence of a judge. Therefore, in these doubts, recourse must be had to the rules which above (n. 172) we set forth concerning the interpretation of laws. But if the doubt remains invincible, one must stand for the possessor.

189. IT IS ASKED. Whether an invalidating law obliges in conscience to omitting the act?

Resp. Affirmatively, if the law at the same time invalidates the act and expressly or tacitly prohibits it; otherwise, no. The reason is, because the obligation of law ought to be estimated from the intention of the legislator. Hence, speaking in itself, he does not sin who attempts to make acts naturally valid, prepared to obey when the judge shall have declared them null. Per accidens, however, it can easily happen that he sins, namely if he foresees that from his manner of acting enmities and grave damages will arise (Salmant., *de Leg.*, c. 2, n. 100).

§ 4. On the Obligation of a Law Founded on Presumption

The things which are here said concerning law we will also to be applied to the sentences of a judge.

190. DEFINITION. A law is said TO BE FOUNDED ON PRESUMPTION, when it prudently supposes something on account of which it is made; and it can be defined: A law prescribing, or forbidding, something on account of a certain circumstance, which the legislator supposes to be connected with the thing. But if the supposition of the legislator does not subsist, the law is founded on a false presumption.

DIVISION. A law can be founded on presumption in a twofold way: 1. On a presumption of fact, when namely from probable judgment it supposes fault, negligence, or another fact to exist in particular in reality, for example, a law prescribing obedience to the sentence of a judge supposes it to be just.

⁶⁹Indeed, in matters pertaining to justice, a sharp discussion is continued even in our times. Vermeersch, *de Justitia*, n. 324 ff. But in matrimonial matters the opinion of those who say that civil power can truly invalidate certain marriages of unbelievers is safe.

2. On a presumption of common danger, which is also called of right, when with certain knowledge it supposes that from such a work, or from such a manner of working, damage, fraud, or grave inconvenience commonly follows; although perhaps it does not intervene in every particular case, for example, a law requiring the proclamations of banns, the solemnities of testaments, the law of the Index as regards books of harmful reading, etc.
3. PRINCIPLES. I. A law founded on a presumption of fact does not of itself oblige in conscience unless the fact exists. The reason is, because, when the truth of the fact is lacking, the law lacks every foundation. Hence the axiom: Presumption yields to truth. We have said of itself; for it can happen that it obliges on account of the public good, for example, to not disturbing order, to averting scandal (I, 100, 150; III, 927).

Hence: 1. "If in judgment it has falsely been proved that your animal inflicted damage, then you are not bound to pay the penalty; and when sentence has been given that you pay, although externally, so that scandal may be avoided, you are bound to pay, nevertheless you can secretly make compensation to yourself."

2. "The same holds for heirs who, because the inventory was neglected, are fined beyond the hereditary goods in paying the debts of the deceased, when in reality the debts exceed the inheritance" (H. Ap., II, 26).
3. II. A law founded on a presumption of right always obliges in conscience, although, in a particular case, no danger underlies it. The reason is, because the presumption of law is not false, and therefore the law does not lack the foundation of binding. For the cause on account of which it was made always subsists, since it supposes that danger is commonly given; which is most true, although in a particular case it does not underlie it. Then, when the end of the law ceases in the particular case, the law does not by this very fact cease, as the common opinion has it (cf. n. 258). Add that the common good forbids that an exception be given, since otherwise evils would not certainly be averted, nor especially would the danger of hallucination on the part of subjects be excluded (I, 199; ed. G., I, p. 178). Therefore in these laws, judgment in the forum of heaven, that is, of conscience, ought to be the same as in the forum of the court (Lugo, *de Just.*, disp. 13, n. 62).

Hence, you are bound to abstain from the reading of prohibited books, even if no danger of perversion threatens you from reading of that kind.⁷⁰ Likewise, you are bound to pay the fine to which you have been condemned on account of damage which your beast truly inflicted, even though the damage was inflicted without your fault. For the end of the law is not only to punish fault, but also to render men more cautious.

Before sentence, however, you are not bound, if the law is merely penal; or if you doubt whether it is founded on a presumption of right or of fact; whether it is invalidating by the fact itself or through a judge, etc. The reason is clear from what was said in the preceding paragraph.

Article II

To Whom the Obligation of Law Extends

Things to be noted beforehand. 1. As Lehmkuhl rightly observes, I, n. 225: It is one thing to be subject to law, to be ruled by law; another thing subjectively to be able to sin against law. In the latter case, it suffices that one can act against law with actual advertence; in the former, this is not necessary. Those who sleep are subject to law, although they can exercise no advertence.

2. If we ask: to whom law extends, we do not intend to speak of natural law. For it is evident that all men, from the fact that they exist, are subject to the right of nature; and therefore we said it was wrong to induce anyone to such acts as the law of nature reprobates (cf. n. 124).

We undertake discourse concerning positive law, especially human law.

3. It will scarcely be necessary to add that the things which here will be said concerning law do not hold exactly of a precept. For a precept, since it has been made for a person, accompanies the subject everywhere, and everywhere reaches him: for it clings to his bones.

193. GENERAL PRINCIPLE. By the obligation of positive law there is reached every man who, having attained the use of reason and having been enrolled into a community or society, is properly and in every way subject to the jurisdiction of the legislator.

⁷⁰See, however, what the Holy Doctor has (*de Prohib. libr.*, c. V, n. 2; ed. G., I, p. 286), permitting that, in a particular case and when necessity occurs, some learned man, in order to refute a heretic from his own source, may read his prohibited book. Yet from these things do not infer that this can be done regularly; for the Holy Doctor concedes this only from epikeia.

It is said 1. Every man who has attained the use of reason; and the reason is that law is a rule directing human actions according to the will of the legislator. But everyone who has attained the use of reason, and he alone, can know the law, and can be directed by it in a human way. Therefore.

2. Enrolled into a community or society; and the reason is, because law is made immediately for a community. Therefore, just as it can oblige no one foreign to the community or society, so it obliges all who have been enrolled into it on account of some title from which enrollment follows: namely, on account of the title of baptism, from which follows enrollment or entry into a society universal in every respect, that is, into the Catholic Church; on account of the title of birth, attainment of the right of citizenship, domicile or quasi-domicile, from which follows enrollment or entry into some local society, for example, into a kingdom, into a diocese; lastly, on account of the title of pure election, yet accepted by the society, from which follows enrollment or entry into some particular society, for example, into a religious Order.
3. Properly and in every way subject to the jurisdiction of the legislator; properly is said; and the reason is, because the legislator can impose laws only on those who are truly subject to him. And hence it is why he himself, although he is a member of the community, nevertheless is not subject like the others to the laws which he makes for it; hence also it is why travelers are not held to all the particular laws of some place. They are indeed in the territory, but not of the territory, which latter condition is absolutely required so that one may be properly subject to the legislator, as will be said below, n. 206; in every way is said; and the reason is, because with respect to matter, in which someone is not a subject, he can be bound by no law: thus regulars are not held to all laws of a bishop; and with respect to territory into which a subject betakes himself, he is not always held to the law. Thus those who leave a diocese remain subjects of the Bishop, and nevertheless are not bound by his laws.

With these things having been generally premised, it must be investigated in particular: to what extent, on account of defect of reason, children and others lacking the use of reason are not held to laws; then to what extent, on account of defect of subjection, unbelievers and heretics are not held to the laws of the Church; clerics to civil laws; travelers to local laws; and lastly the legislator himself to his own proper laws.

§ 1. On Children and Others Lacking the Use of Reason

194. PRINCIPLES. I. Those who have only the habit of reason are not held to positive laws. The reason is clear from the aforesaid, because they cannot be directed in a human way. Therefore it is lawful for them to eat meat on a forbidden day, etc.; to omit Mass on feast days, etc.

195. II. Children using reason are subject to positive laws as regards Confession and Paschal Communion.

This is clear from the celebrated decree *Quam singulari*, given on August 8, 1910 (A. A. S., II, p. 582), by which all things are reduced to the norm of the Lateran Council.

Note. In order that children be subject to these laws, it is not required that they have in fact reached the age of seven; it suffices that they use reason; or better, to use the words of St. Thomas (3, q. 80, a. 9 ad 3), it suffices that they begin to have some use of reason ... so that they can conceive devotion to this Sacrament. As regards the other things required in children, see what will be said in the treatise on Communion.

III. Children using reason, after the seventh year, are subject to the other laws of the Church, and after puberty, to ecclesiastical penalties.

The first part is clear; for as regards these children all things are verified which are indicated in the general principle enunciated above. Whence rightly the Sacred Penitentiary, March 15, 1837: "Children, after the seventh year, are held to observe the quality of foods prescribed by the Church." Cf. De Angelis, *Prael. Jur. can.*, I, 3, tit. 46, n. 5.

The second part rests on the reason that every censure presupposes contumacy and deceit on the part of the one to be punished, which crimes are commonly judged to be present only in those who have reached puberty.

Note, however (cf. n. 1261), that even those who have not reached puberty incur censures against violators of the enclosure of nuns and strikers of clerics, as is expressly noted in words in the Law. St. Alph., VII, n. 14; ed. G., p. 277; Vermeersch, *de Relig.*, I, n. 310.

We said: children using reason, after the seventh year, are obliged. This obligation must also be maintained if, concerning some child who is seven years old, it is doubted whether he has attained the use of reason; for the use of reason is presumed to be present. St. Alph., III, n. 270; ed. G., I, p. 550; Lehmkuhl, I, n. 230.

But what if children become possessed of reason before the seventh year? There is a twofold opinion. The first, which seems more probable to St. Alphonsus (III, n. 1012; ed. G., II, p. 391, and the place indicated above), affirms. The reason: the laws of the Church oblige without distinction all who are endowed with reason.

The second opinion, also probable, denies. The reason: law is given for cases commonly occurring (cf. St. Thom., 2.2, q. 147, a. 4). We can safely follow the latter opinion, to which the response of the Sacred Penitentiary communicated above lends support. Nevertheless, the first opinion is much to be commended, so that children, from their first age, may become accustomed to the yoke of the Lord.

196. III. Drunken persons, and those delirious for a time, remain subject to positive laws. The reason: because the law which reached them when they had arrived at the use of reason perseveres in retaining its force upon them, as still enjoying reason habitually.

Whence, if in the time of drunkenness or delirium they do something prohibited by positive law, for example, if they use forbidden foods, they violate the law materially; although, on account of defect of actual knowledge, they are excused from formal sin. "For it is one thing not to be held to law, as children and the insane are not held to laws; another thing to be excused from law, as the drunken, the ignorant, and those sleeping are excused. Hence it is a sin to offer meats on a forbidden day to the second group, but not to the first; just as also it is a sin to incite all those persons to something evil by natural right" (I, n. 153, 155; ed. G., I, p. 131).

§ 2. On Unbelievers and Heretics

197. As we have already observed, men are aggregated to the Church, and are subjected to her jurisdiction, only through baptism.

PRINCIPLES. I. Unbelievers, Jews, and catechumens are not held to the laws of the Church. Whence, scandal and contempt of law, or public disturbance of festal quiet, being excluded, it is not illicit to offer meats to the same persons on days of abstinence, to impose servile works on feast days, etc.

They themselves, however, are held to embrace the Evangelical law and to receive baptism, as soon as they have been sufficiently instructed concerning our faith. Indeed, although they cannot be compelled to embrace the faith, nevertheless they can be driven to hearing an exposition of the faith (I, 154, 2.; II, 18; III, 272). Cf. below n. 437.

198. II. Heretics, apostates, schismatics, and the excommunicated, of themselves, are held to the laws of the Church. For these, although they are rebels, nevertheless always persevere under the dominion of the Church. The same must be said of heretics, concerning the validity of whose baptism there is doubt; for, in the external forum, one must stand for the validity of the act (cf. n. 51).

It was said of themselves: 1. because many heretics do not know, although they know the obligation of returning into the bosom of the Church, that they are held to the laws of the Church. Whence, they are easily excused on account of ignorance; 2. because often there are present circumstances on account of which it must be judged that the Church does not will to oblige heretics by her laws, because the observance of them would bring great inconveniences upon them. And this will of the Church is to be presumed with respect to those laws which directly tend to the sanctification of souls, such as laws of fasting, feast days, etc. For in these things the Church acts more mildly, lest sins be multiplied.

It is otherwise with respect to laws which have been made for restraining abuses and protecting public order, for example, concerning impediments of matrimony. For that heretics are held to these laws has several times been declared by ecclesiastical authority, explicitly or at least implicitly (De Angelis, I, I, tit. 2, n. 13; Lehmkuhl, I, n. 228).

See what Wernz observes upon this opinion (I, n. 103), where he entirely rejects the immunity of heretics which we admit for some laws.

§ 3. On Regulars and Clerics

An inferior, even if he is a legislator, can do nothing against the law of a Superior. From this axiom, which presides over the whole matter, the following things follow.

199. PRINCIPLES. I. Regulars exempt from episcopal jurisdiction are not held to the laws of the Bishop, even if they dwell in his territory. The reason is, because through exemption, as soon as they have fulfilled the required conditions, they are no longer subject to his jurisdiction.

Except the cases excepted by right itself, for example, concerning censures and interdicts issued by the Bishop, or concerning feast days appointed by him for them, as was decreed by Trent (Sess. 25, c. 12). See particular cases n. 2189. Cf. St. Alph., *de Privil.*, n. 72; ed. G., I, p. 224.

200. II. Clerics are held to civil laws, insofar as these laws are not opposed to ecclesiastical immunity still in force. The reason for the exception is, because laws which violate immunities are unjust, since they go beyond the power of the civil legislator (cf. n. 149, 2.).

But clerics are bound to the other laws as to their directive force, because they too are members of the political community. Nor indeed, as to these same laws, can the civil legislator exercise coercive force upon clerics, because by this exercise also ecclesiastical immunity would be violated.

Concerning the immunity of the Supreme Pontiff from civil jurisdiction, see what Lehmkuhl has, I, n. 231. The saying of Leo XIII is known, when he was Bishop of Perugia: "In the first centuries," he says, "Pontiffs were subjects as to fact, not as to right." Cf. pastoral letters concerning the temporal principate of the Roman Pontiff.

201. It was said 1.: Insofar as they are not opposed to ecclesiastical immunity. Now this immunity is threefold: personal, local, and real.

Personal immunity comprehends the exemption of clerics: a) from the lay forum, in both civil and criminal causes; b) from those burdens which are considered vile or sordid, such as the repair of roads and bridges; c) from military service, from the reception of soldiers, and other prestations by reason of military service; d) from tutelage and curatorship, and generally from those things which either do not befit the holiness of the clerical state, or cannot be composed with the offices annexed to the same (cf. n. 2224 ff.).

Local immunity consists chiefly in two things: a) in the prohibition lest profane acts be carried out in sacred places, especially such as are more gravely repugnant to their holiness; b) in the right of asylum, by which it is provided that those fleeing to sacred places not be drawn out from them, except under certain conditions (cf. n. 582 and n. 1332).

Real immunity is the exemption of goods, both of the Church and of ecclesiastics, from taxes and burdens imposed by secular power. How far this extends, see among the canonists.

It was said 2.: Insofar as they are not opposed to ecclesiastical immunity STILL IN FORCE. For the Church can renounce the exercise of her right, either expressly, for example, through a Concordat, or tacitly, as regards this or that immunity, for the good of peace. Wherefore the Concordats of the Holy See with various kingdoms are to be inspected. But tacit renunciation is not easily to be presumed; because the things on which it is presumed to rest are commonly not done spontaneously, but unwillingly (Lessius, *de Just.*, l. 2, c. 33, dub. 3).

202. IT IS ASKED. How ought clerics, or even laymen, conduct themselves, lest they seem to wound the RIGHT OF IMMUNITY, when laws which stand against the same are proposed to them as to be observed?

Resp. I. IN GENERAL: 1. Against laws of this kind one must protest, whenever, if protestation were omitted, scandal would have to be feared; 2. One must yield to force in such a way that open acts of violence are not provoked, which serve only to multiply injuries to be inflicted on the Church.

- II. IN PARTICULAR: 1. A pastor, or inferior cleric, likewise a civil official, should have recourse to the Bishop, unless the matter concerns a case in which either there is danger in delay, or a contrary custom has grown up. 2. The Bishop "should believe that he will do abundantly enough for his office" (says Benedict XIV, *de Syn.*, l. 9, c. 9, n. 12), "if he takes care lest the secular prince ever arrogate to himself the right of sacred things, that is, lest ... he mix himself in causes ... merely ... spiritual and ecclesiastical"; likewise, lest the lay judge also invade that part of immunity which has thus far remained untouched.

§ 4. On Newcomers, Travelers, and Wanderers

Schmalzgrueber, l. 2, tit. 2, n. 16, 19; Wernz, IV, n. 177; Feije, n. 204; Bucceroni, I, n. 198. Attend especially to the causes argued before the Tribunal of the Sacred Roman Rota.

203. Things to be noted beforehand. I. In the broader sense, the words newcomer, traveler, and wanderer designate promiscuously any FOREIGNERS.

In the strict sense, a newcomer is said to be one who, outside the place of origin, has a domicile or quasi-domicile. To him is opposed the inhabitant, who remains in the place of his origin. A traveler is he who, having a domicile or quasi-domicile somewhere, remains accidentally in another place, although for a long time, for example, to visit a friend, and does not

have the intention of dwelling there. A wanderer is said to be one who has nowhere a domicile or quasi-domicile, but transfers himself from one place into another.

It can happen that someone ought for the moment to be called a wanderer, namely when he has left his old domicile, and has not yet acquired even a quasi-domicile, for example, if someone were to migrate from Europe into the regions of America.

- II. ON DOMICILE. Domicile is habitation in some parish,⁷¹ with the intention of remaining there perpetually, unless something calls one away from there. In order that it be acquired, two things must be present at the same time: 1. that someone begin to dwell somewhere, and 2. that he have the intention of remaining there perpetually.

If such intention is not clear, it is judged in the external forum that this mind is or was present, either by ten-year or assiduous habitation, when the will of departing has not been signified, or by the transfer of the greater part of goods, or by purchase or building of a house, or by assertion under oath. Cf. A. A. S., IV, p. 328, 676 ff.

In order that domicile be lost, it is required that the two aforesaid things be absent at the same time. Neither departure alone, nor the intention alone of not remaining, brings about the loss of domicile.

Note. Besides the domicile which we have just described, which they call voluntary, there is given legal domicile, which someone necessarily acquires from the disposition of law. That truly is determined for wives, who acquire the domicile of the husband, and retain it after the death of the husband, until they have acquired another; for wards, who obtain the domicile of guardians; for children, whose domicile, until they become of their own right, is the same as that of the parents, and remains the same even after majority, until they have acquired another, the former having been left behind.

Thus civil law, whose dispositions concerning legal domicile ecclesiastical law holds ratified: from which it follows that all who have legal domicile cannot acquire another true domicile elsewhere, though they can acquire a quasi-domicile. As regards others, who do not have legal domicile, no ecclesiastical law prohibits them from choosing several domiciles (A. S. S., vol. 15, p. 222), provided they dwell almost equally in all. Several civil rights concede the same, for example, German Civil Law, § 7.

- III. ON QUASI-DOMICILE. Quasi-domicile, which civil rights do not recognize, is habitation in a place together with the intention of dwelling there for the greater part of the year.

It is acquired by the very fact that habitation with such an intention begins, nor is it required that someone in fact have dwelt in the chosen place for some time.

But note: habitation is required, nor is it sufficient that someone pass the whole day for months or years in a workshop, about to return in the evening to his own or his paternal house. A fortiori, it is not sufficient that, after the manner of one traveling, he migrate from region to region, from place to place.

It was said: for the greater part of the year, and thus the Sacred Congregations express themselves (Holy Office, June 7, 1867). By these words there is commonly intended the mind of dwelling for six months (cf. Noldin, I, n. 152). Cf. also A. S. S., 31, p. 346. Therefore he who with that intention has begun habitation has acquired quasi-domicile in the parish, so that, as regards fulfilling laws and receiving sacraments, he becomes subject to the competent legislator.

If a doubt arises concerning the mind of remaining for the greater part of the year, in the external forum it is judged to be present if various indirect indications are given: for example, habitation for a month, rental of a house for six months. The mind can also be proved directly by oath.

Note. 1. In order to contract matrimony, the Sacred Congregation of the Council declared, in the celebrated decree *Ne temere*, that one month's stay suffices. Therefore then the question is no longer of domicile or quasi-domicile, since no mention is made of the mind of remaining there for a longer time of the year. This declaration confirms the practice introduced in the United States of North America by Leo XIII in the year 1886.

2. Authors dispute whether someone can have two quasi-domiciles, and whether children acquire the legal quasi-domicile of parents (Wouters, op. cit., p. 102 ff.). Whatever may be the case concerning the controversy, it is certain that nothing stands in the way of children choosing a quasi-domicile for themselves, as many servants or workers, students, soldiers, public officials, etc., do.

⁷¹Domicile is acquired in some diocese by means of domicile in a parish. But so that it can be established to which parish such a house belongs, attention must be paid to the principal door alone of the building (A. A. S., III, p. 456; *Nouv. Rev. Theol.*, 44 [1912], p. 745); if this is changed, so that it is in another parish, nevertheless the former domicile remains. See Wouters, *Comment. in decret. Ne temere*, p. 103.

3. As regards the sick received in a hospital, if a question is raised concerning their domicile or quasi-domicile, it must be seen whether they are admitted for a brief or long time, whether after an incurable illness, so that a true judgment can be made.
4. PRINCIPLES. I. Foreigners are obliged, just as the inhabitants of the place, both by the laws of common right and by the laws which the security or convenience of the place wills to be observed by all.⁷² The reason for the first is, because all are subject to the common legislator. The reason for the second is, because the common good of the place, and right order, impose the law on all (I, 156).

Wherefore, local law, besides the necessity of avoiding scandal, binds all, if it regards: a) the form and solemnity of contracts, because the place rules the act,⁷³ so that confusion may be avoided (A. S. S., vol. 32, p. 363); b) the vindication of a delict committed against common right, because the delinquent obtains the forum where he committed the delict; c) dangerous things to be carried away, or directly the governance of travelers.

We said: just as the inhabitants of the place, that is, neither more nor less, since right order requires this. Hence: 1. Foreigners enjoy the privileges of the place, nor are they bound by a law of common right, if it has been abrogated in this place; or if a contrary custom is in force, or an exemption, for example, in monasteries of regulars, or finally a dispensation which affects not persons, but the territory itself.

2. They do not enjoy the privileges of their homeland, because they have lost these by departure. Wherefore they are held to the common law, for example, of fasting or of a universal feast, as it is observed in the place in which they dwell, or through which they pass. In this case that saying holds: If you shall have been at Rome, live in the Roman manner; if you shall have been elsewhere, live as there.

He, however, who has already satisfied the common law in his homeland, more probably is not held to satisfy it again, if he comes to a place where the same precept urges later. Thus an Italian who fasted in his homeland on the vigil of St. Peter is not held, scandal being set aside, to fast again in France, where the fast is transferred to the following Saturday; because there is not given an obligation of fulfilling the same precept twice (Gury, I, 97, 7.).

But what if someone, while they are fasting in his homeland on account of the vigil of a universal feast, is staying in a place where the fast is transferred to the following Saturday, and returns to his homeland before Saturday? Some say that he ought to fast once, wherever he may remain; others judge that he can use *epikeia*, and that the law ought not to be imposed on him, provided he has not arranged all things thus on purpose. Cf. Noldin, I, n. 148; Lehmkuhl, I, n. 236.

205. II. Newcomers are released from the laws of the homeland from which they departed; but they are held to the laws of the place in which they establish domicile or quasi-domicile, as soon as they have arrived there. The reason for the first is, because local law does not go beyond the territory. Except if someone physically absent is reputed morally present by a fiction of right, for example, by reason of the office which he bears, or the goods which he possesses in the homeland. For then actions or omissions are judged to be done in that territory, or to have effect there (Bouquillon, *Theol. mor.*, n. 106, 243). The reason for the second is, because newcomers, when they have acquired at least quasi-domicile, are now subject to the jurisdiction of the Superiors of the place; therefore they are also held to the laws, just as the inhabitants themselves (I, 156; ed. G., I, p. 136).
206. III. Travelers and wanderers are regularly immune both from the laws of the homeland and from the laws of the place in which they are staying. The reason for the first is the same as for newcomers, because they are outside the territory of the legislator. The reason for the second is both because laws oblige only subjects, such as travelers are not, since they are by no means subjected to the jurisdiction of the Superior of the place on account of that brief stay; and because he is not said morally to dwell in some place who does not remain there, nor has the mind of remaining, for the greater part of the year. This opinion, more probable to St. Alphonsus, has now already become more common and is entirely safe in practice. See the Holy Doctor, I. c. (ed. G., I, p. 135). Except if a Superior of higher order willed particular laws to be observed also by travelers, for example, that an imposed prayer be said.

We said: regularly; for travelers are held to the laws of the homeland, not only in the same cases as newcomers, but also in the case in which a special prohibition of departing stands in the way, such as is had in absolving reserved cases (cf. n. 1278). But with such a prohibition excluded, which would bind the subject after the manner of a personal law (A.

⁷²Here speech is made only of laws. It is outside controversy that travelers or wanderers are of themselves bound everywhere by personal precepts. Thus a priest suspended from priestly functions in his own diocese can celebrate in no other (Bucceroni, I. c.).

⁷³This, however, cannot be extended to private acts; therefore if an Italian or Frenchman shall have made a holographic testament, it will be valid wherever he shall have made it. Cf. D'Annibale, I, n. 204.

S. S., vol. 36, p. 222), each one can leave the homeland or betake himself to an exempt place, even to exempt himself from the law (see St. Alphonsus, l. c., n. 157); because then not fraud, but the condition of the place favors the one departing.

The general rule can be expressed briefly in this way: In order that someone actually be obliged to a local law, it is regularly necessary that he be in the territory and of the territory; in order that he enjoy a local privilege, it is required and suffices that he be in the territory.

207. From these things you resolve: 1. If in your territory there is a special feast, and you are going to set out for another place where there is no feast, you are not held to hear Mass before departure, provided you arrive outside the place where the precept is in force before the hour of the last Mass, at which time the precept would already urge.
208. If in your territory there is a fast, and on the same day you go to a place where there is no fast, you can breakfast in the morning, but not likewise eat meats. The reason for the first is, because, since fasting is indivisible, as consisting in one meal, he is not held to fast to whom several meals are conceded on the same day. The reason for the second is, because abstinence is divisible, and must be observed for the whole time in which one remains in the place where the law obliges.
209. Existing in the morning in a place where there is no fast, you can eat meats there, even if about midday you are about to return to a house where there is a fast; at home, however, you are held to abstain from meats (I, 157).
210. Note. The things said above hold concerning laws. Things are otherwise if we consider precepts alone. For these follow subjects wherever they may have been, as we have already noted. It must be noted besides that the best mode of avoiding anxieties of conscience, especially if someone ought to undertake a long journey, consists in this, that a personal privilege be acquired (cf. n. 243). For we can use this everywhere (Noldin, I, n. 134; Genicot, I, n. 119).

§ 5. On the Legislator

209. There is a twofold genus of legislators. For some, as the Pope, a bishop, a monarch properly so called, enjoy absolute authority. Others, as senators, deputies, and the king himself in representative government, make one moral body, by which legislative power is exercised. Hence it is established:

I. In representative States, such as republics and constitutional kingdoms, the legislators and the president of the government himself are subjected to laws made by common counsel and will. And the reason is, because the legislator is properly not the singular person, but the moral body itself, which is superior to any member. The same holds for Bishops, with respect to laws which have been established in a provincial or general Council.

II. In the Church and in a pure monarchy, a singular legislator is not properly held to his own laws; because he is subject neither to himself nor to his predecessors.

He is not held to them: 1. neither as to coercive force, because no one is coerced by himself, and from another source it is repugnant that a Superior be judged or punished by an inferior; 2. nor as to preceptive force, because no one owes obedience to himself.

Nevertheless he is held as to directive force and indirectly, as the natural law proclaims, insofar namely as, from a certain equity, he ought to conform himself as head to the members. But it is probable, scandal being set aside, that he is held only under light matter. Yet this is limited if the law has been made concerning the taxing of a price, or concerning the invalidation of a contract; for even the prince is held to stand by such a law, lest he wound justice (I, 154; H. Ap., II, 28). See what Lehmkuhl has, I, n. 237.

Article III

How the Obligation of Law Is to Be Satisfied

In this article two things are to be discussed: 1. concerning the mode of satisfying a law; 2. concerning the mode of acting in the concurrence of several precepts.

§ 1. On the Mode of Satisfying a Law

210. In order that satisfaction be made to the obligation of any law whatever, there is required and suffices the placing or omission of that which any law commands or forbids.

PRINCIPLES. I. A negative law is satisfied by the omission, even involuntary, of the prohibited act. The reason is, because a negative law intends only the omission of the act.

Thus a sick man satisfies a precept prohibiting servile works on feast days, although he observes the precept from impotence. It can happen, however, that he violates it affectively through a depraved desire.

211. II. An affirmative law is satisfied by the placing of the work, done in a human manner, at the due time, and with the intention of doing the work which the law commands. Thus commonly.

We say 1. By the placing of the work. But the work can be performed through another, if it is not personal; for example, a donation can be made by another. The prescribed work must be placed whole. If it becomes impossible, apply the distinction which we shall give below, n. 224.

2. Done in a human manner, that is, knowingly and voluntarily.⁷⁴ The reason is, because a law which commands men can command only human acts.

Hence he who, on a feast day, while drunk, sleeping, or altogether coerced, is present at Mass, by no means satisfies the precept of hearing Mass, for the reason that he does not operate in a human manner; but it is otherwise if from fear he places the prescribed act (I, 165). Except if the prescribed work is a donation, payment of taxes, because in these things the external performance of the action suffices, although coerced.

3. At the due time. Thus the precept of hearing Mass is affixed to feast days, Communion to the paschal time; and in these cases the circumstance of time pertains to the substance of the precept (VI, 297; ed. G., III, p. 273).

But if the time of fulfilling the law has not been determined, satisfaction must be made to the law as soon as it can conveniently be done; otherwise, fulfillment could always be deferred further, and at last omitted; which is repugnant. Cf. below n. 213.

4. With the intention, etc., that is, the intention ought so to be directed to the work that such a work, as to its specific being, is performed. For according to a different intention the same act can constitute a different work: thus the reading of psalms can be study or prayer.

Hence one reciting the canonical Hours does not satisfy the precept by the sole intention of reading or learning; nor one going to Mass only for this end, that he may feed his eyes and ears, that he may converse with another, that he may await a friend, that he may accompany a friend going or returning (I, 162-165; H. Ap., II, 29).

212. Corollaries. 1. The intention of satisfying the law is not required. The reason is, because precepts do not oblige to formal obedience, that is, that the thing prescribed be done because it is prescribed, but only to material obedience, that is, that what is prescribed be done.

Hence: a) "He who, unmindful of some precept, fulfilled it, for example, not knowing that it was a feast day, nevertheless freely was present at Mass, has satisfied. Nor, as some will, is it necessary that afterwards, understanding that it is a feast day, he then will to satisfy through the Mass heard; because he fulfilled the substance of the prescribed act. - b) He truly fulfills a vow, an oath, and sacramental penance (cf. n. 1724), who executes the works promised or enjoined, even if he does not have the intention of fulfilling; provided, however, that he does not apply them for another thing. The reason is, because vows, etc., are laws as it were particular, which a man imposes on himself or another; whence they oblige only to the substance of the act" (I, 163).

2. The intention of fulfilling the end intended by the legislator is not required, of itself, unless the end precisely in itself is commanded, according to the common axiom: The end of a precept does not fall under the precept.

Thus, for example, he satisfies the precept of the Church who fasts on the appointed days, even if he does not feel, or does not intend, his own mortification. He, however, who acted against this end, for example, by eating again or a third time after he has already culpably broken the fast, would sin venially, according to the more probable opinion; "because to act contrary to the end of the law is a certain disorder, which does not seem to be excused from all fault" (III, 1030). But if the end is imposed in itself, then, as is evident, it falls under the precept. Wherefore, if it is prescribed to someone that he pray for the exaltation of the Church, it does not suffice simply to pray, but it is necessary to intend this determined end, at least implicitly.

⁷⁴Human manner also signifies: reasonably, so that the axiom, A little for nothing, ordinarily obtains force. Certain laws are excepted which must be fulfilled strictly: for example, in religious profession, ordination, natural fast, etc.

3. The state of grace or the motive of charity is not required (H. Ap., II, 28). This is clear from the 16th proposition of Baius condemned by St. Pius V: "That is not true obedience to the law which is done without charity." Except if the state of grace pertains to the substance of the precept, as in paschal communion.

"Meanwhile, it is certain that charity is required in the one operating, so that the fulfillment of the precept may be meritorious, according to that (1 Cor. 13): If I should speak with the tongues of men, etc." (I, 162).

4. Indeed satisfaction can be made to the law through fulfillment of the prescribed work, although the action from another source is vitiated by some sin, for example, if the end of the one operating is corrupted, who acts from vainglory, etc., provided that the substance of the prescribed act is not corrupted, for example, that the confession or communion is sacrilegious, as is drawn from the 14th proposition condemned by Alexander VII.⁷⁵

Thus, therefore, he satisfies who fasts from avarice, hears Mass in such a church because he will more easily find an occasion of stealing (I, 162). For law requires nothing beyond the substance of the act.

5. Finally, he fulfills the law who places the work and expressly intends that he does not will to satisfy through it, for example, he who hears Mass from mere devotion, intending afterwards that he will satisfy in another Mass. The reason: precepts oblige only to the substance of the work enjoined. Therefore, once that is placed, it is not in the power of the one operating not to satisfy, nor is he held to anything else (I, 164; H. Ap., II, 29).

Thus it is clear how great a difference exists between laws placed by a Superior and those things which each one imposes upon himself after the likeness of law: for example, through a vow, through a promise, donation, etc. For if someone promised a rosary from a vow, he is not freed if he says the rosary with the intention of not fulfilling the vow: here all things depend on the will of the one promising. But in laws made by a Superior, all things must be judged from the will of the legislator, which is not extended beyond the substance of the work. See St. Alph., IV, n. 176; ed. G., II, p. 605, where the question is practically unfolded.

Note. The discourse is concerning human law only, because, as Lehmkuhl rightly notes, I, n. 246, natural law obliges not only to the substance of the work, but also to the mode of virtue. And he cites St. Thomas and Suarez.

213. IT IS ASKED. What if the law has not been fulfilled at the determined time?

Resp. Distinguish. The determination of time was made either for ending, or for soliciting or urging the obligation. In the former case the law, or vow, once the time has elapsed, no longer obliges; thus, for example, he who did not fast on the day of the vigil sinned, but is freed from the law, because the burden is affixed to the day. In the latter case, the law continues to urge: thus he is not freed from the obligation of communicating who did not fulfill the precept in paschal time;⁷⁶ he who neglected sacramental penance imposed for such a time is not de-obliged (III, 220; VI, 297; H. Ap., XII, 40).

§ 2. On the Mode of Acting in the Concurrence of Precepts

214. When several precepts concur, it is asked whether satisfaction can be made to them by one act; or at least at the same time, by diverse acts.

PRINCIPLES. I. By one act satisfaction can be made at the same time to several precepts, if they fall upon the same matter, on account of the same end. Thus, for example, if a feast of precept falls on a Sunday, it is enough to hear one Mass. He who is obliged to the Hours by reason of order and benefice is held to recite them only once. The reason is, because then by one act the whole is placed which is prescribed by the diverse laws; and therefore he who violates two precepts of this kind commits only one sin (I, 166; H. Ap., II, 31).

Except: 1. If the matter concerns justice, in which equality of thing to thing is always attended to; and therefore when the matter is multiplied, the payment also must be multiplied: for example, if from damage inflicted you owe a hundred, and from purchase also a hundred, by giving a hundred once you do not satisfy, as is evident. 2. If something else is clear concerning the mind of the one prescribing, if from usage or circumstances the Superior is judged to will the fulfillment of his precept through distinct acts. Thus, for example, to a fast owed from a vow and from sacramental penance satisfaction is generally not made through one fast, because from usage the mind of the confessor is judged to be different (III, 309).

215. II. At the same time, by diverse acts, satisfaction can be made to diverse precepts, provided that one act does not impede the other. The reason is, because generally, when some thing is prescribed, diversity of times is not required.

⁷⁵Sylvius, Palud. Gran., with Diana, said that those satisfy the precept of annual Confession who only externally receive the sacrament of penance.

⁷⁶Some, for example, St. Antoninus, Toletus, indeed teach that in the precept of paschal communion the time was determined rather for ending the obligation. See St. Alph., VI, n. 297; ed. G., III, p. 274.

Thus, for example, it is lawful for you, at the same time, to hear Mass prescribed on a feast and to recite the Hours, or other prayers to which you are held from a vow or sacramental penance. But if a confessor has prescribed to a penitent to hear two Masses on the same day, this is to be understood of Masses to be heard successively, not at the same time. For such is presumed to be the intention of the confessor, unless something else shall have been expressed. But he to whom the confessor has prescribed to hear Mass on each day for a month satisfies when on Sunday he has been present at one Mass. For it is reasonably presumed that the confessor did not will to oblige him to two Masses on the same day, unless he expressed this (H. Ap., XVI, 57). But if the penitent has done nothing concerning these things, he would commit a twofold sin, as Lehmkuhl observes, I, n. 247, at the end.

216. IT IS ASKED. What is to be done in the concurrence of two incompatible precepts?

Resp. Other things being equal, the greater must be observed before the lesser, which then ceases to oblige. Hence there prevails: 1. the negative over the affirmative; and therefore it will not be lawful to steal in order to aid the poor; 2. the natural over the positive, and the divine over the human; and so Mass must be omitted on a feast, lest one gravely sick be deserted; 3. the law of a Superior, for example, of the Pope, over the law of an inferior, for example, of a Bishop; 4. ecclesiastical law over civil; 5. that founded upon the stricter virtue, for example, justice, over that founded upon a less strict virtue, for example, charity; whence he who cannot both give alms and pay a debt is held to abstain from alms (cf. n. 30).

We said other things being equal; because account must always be taken of other circumstances which perhaps command either that the order be inverted, or change the case. Thus the poor person in extreme necessity must be succored before you pay a debt to a creditor not staying in the same necessity, which nevertheless would have to be done from justice. Thus also viaticum cannot be given to one dying under the species of wine, although this latter thing is ruled by ecclesiastical right alone, etc. Cf. *Nouv. Rev. Theol.*, vol. 38, p. 149 ff.

Chapter V

On Causes Taking Away the Obligation of Law

217. Two things remain to be discussed: the one of these concerns causes on account of which only the obligation of law ceases or is suspended, while the law remains; the other concerns causes which take away the law itself in perpetuity and for the whole community. In the first case subjection remains, in the second it altogether vanishes.

As regards the causes which take away THE OBLIGATION OF LAW, although in an unequal degree, these are counted especially as five, namely:

1. Ignorance, which takes away the obligation only per accidens, namely by excusing from formal transgression of the law, but by no means from its material transgression.
2. Impotence, whether physical or moral, or fear, which, in a particular case, altogether takes away the obligation; excusing even from material transgression, since the legislator is judged not to have willed, already from the beginning, to extend the obligation to this particular case.
3. Dispensation, which, by a positive act of the legislator, namely by a particular or even general indult, exempts one or several from the obligation of law, but not in a permanent manner.
4. Privilege, which exempts permanently from the obligation either an individual or even a group of persons, and which therefore must be held as a broader or more stable dispensation.
5. Departure from the territory of the legislator, or absence, which cause is called not only excusing, impeding, or exempting, but extracting, because it totally draws the one departing out of the dominion of the law.

Concerning this last cause we have already disputed sufficiently in the preceding chapter, where we treated of travelers (n. 206). It remains, therefore, that we treat of the others in four separate articles.

Article I

On Ignorance of Law

There will be a fuller discourse concerning ignorance where we shall treat of human acts and sins. Meanwhile it is enough for our matter to note the following things.

218. DEFINITION. Ignorance is defined as the defect of due knowledge. One is invincible or inculpable, namely that which cannot be overcome or taken away, because either doubt concerning the necessity of the thing to be known never came into the mind; or, even if it came into the mind, nevertheless knowledge could not be acquired by moral diligence. Another is vincible or culpable, namely that which, by the application of moral diligence, could and ought to have been overcome (recall the things said n. 16).

219. PRINCIPLES. I. Invincible ignorance excuses from the observance of law, and at the same time from the guilt of fault. For no one can be strictly obliged to that which he does not know, nor could know; and no one sins except by a voluntary act, which essentially presupposes knowledge (cf. n. 125).

II. Invincible ignorance of the law also excuses from the guilt of the penalty annexed to the law. The penalty is decreed in the law on account of fault. Therefore, when the cause ceases, the effect also established by the law ought to cease, as the Doctors commonly teach (I, 160).

If, however, in the external forum, a penalty is dictated by a judge upon one materially delinquent, it must be undergone, as was said above (n. 191).

220. IT IS ASKED. Whether he is excused from the penalty who knows the law which he transgresses, but is ignorant of the penalty annexed to the law?

Resp. Negatively, of itself, because reason dictates that evil, according to its nature, is to be punished.

There is exception: 1. If the penalty is most grave, exceeding the merit of the crime. 2. If it is an ecclesiastical censure, which those who are ignorant do not incur, unless the ignorance is crass, or gravely culpable. The reason is, because to incur a censure there is required contumacy, or virtual contempt of the law. Indeed, if the censure is imposed on those presuming, or sinning rashly, deliberately, or knowingly, crass ignorance excuses; indeed even, not improbably, affected ignorance, because this, although it is grave negligence, nevertheless is not knowledge (cf. n. 1269).

Article II

On Impotence of Observing a Law

221. The impotence of satisfying the obligation of law is twofold, namely physical and moral.

Physical impotence, which also is customarily called absolute, is had when strength for fulfilling the law is lacking: in which state there is, for example, a sick man who, fixed in bed, cannot be present at Mass on Sundays and feast days. To absolute impotence is referred the necessity of fulfilling a higher law, according to the things said n. 216.

Moral impotence, or excusing fear, is had when the law cannot be fulfilled without danger of grave damage or inconvenience; and it is defined: grave difficulty per accidens joined with fulfillment of the law.

We say per accidens; for, as Sanchez rightly notes (*Decal.*, l. I, c. 18, n. 2), if the law were, in itself, too difficult or burdensome for the whole community, such a cause could not only excuse from the law, but take away the law itself, as will be explained n. 256 ff.

222. PRINCIPLES. I. Physical impotence always excuses from observing the law. The reason is, because “no one can be obliged to the impossible,” as the 6th rule of right has it, in the Sixth. Hence, impotence also excuses to which you previously gave cause through sin, for example, by rendering yourself unequal to fasting, provided you grieve for the sin (I, 176; III, 1045).

II. Moral impotence excuses from observing the law, if damage in itself grave and relatively graver than the neglect of the law is imminent. The reason for the first is, because the legislator is not to be judged to impose, besides the burden which inheres in the fulfillment of the law, another burden, and this a grave one. We say burden, and this a grave one; because otherwise no law would ever oblige, since the fulfillment of any law whatever is joined with some inconvenience. The reason for the second is, because from two necessary evils the lesser must always be chosen (I, 175).

The gravity of damage depends on several things: 1. on the nature of the law: thus negative laws require graver damage; 2. on the intention of the legislator, who for the circumstances of times can act more mildly; 3. on particular circumstances, which give place to epikeia. In doubt concerning the gravity of the damage, the excuse is valid, if the fact truly exists which truly probably suffices for excusing, as is clear concerning a convalescent who fears lest by fasting the sickness be increased (cf. n. 248).

From this you will gather: Grave fear, for example, fear of losing life or health, with damage to society or religion excluded, takes away the obligation of human law, whether ecclesiastical or civil. It also sometimes, although with more difficulty, takes away the obligation of positive divine law, for example, of the law prescribing the integrity of confession; indeed even of affirmative natural law, for example, concerning a deposit to be returned, as we have already explained above (n. 173-174).

224. III. Impotence of satisfying the whole law, of itself does not take away the obligation of satisfying that part which can be fulfilled. This is clear from the 54th proposition condemned by Innocent XI: "He who cannot recite Matins and Lauds, but can recite the remaining Hours, is held to nothing; because the greater part draws the lesser to itself." By these words the opinion of Navarrus, Diana, Tamburini, and Caramuel is rejected. Except if the law cannot conveniently be divided, or is not accustomed to be divided, or if in the possible part the reason of the precept does not remain (H. Ap., II, 45).

Hence: 1. He who cannot fast in Lent ought to abstain, if he can, from meats. Likewise, he who cannot fast on all days is held on those days on which he can without grave inconvenience.

2. If someone, lacking a breviary, knows a few things from the Hours by memory, he is not held to recite them; otherwise, if he holds in memory a notable part, for example, Vespers or Compline. The reason is, because the divine Office is divisible, and the reason of the precept is preserved only in a notable part.
3. He who vowed a pious pilgrimage, and cannot complete the whole journey, is not held to begin it; because neither can the end of the precept be obtained, nor can the reason of the precept be preserved (I, 177; III, 225).
4. If impotence excuses from law, it is rightly asked:

Whether it is lawful to constitute oneself in impotence of fulfilling some law, or, in other words, whether it is lawful to place or not remove causes which impede the fulfillment of the law?

Note beforehand. a) One thing is an exempting cause, another an impeding cause. An exempting cause is present when someone withdraws himself from the jurisdiction of the law, so that it can no longer reach him. An impeding cause is present when someone, bound by the law or about to be bound proximely, throws himself into such a condition that physically or morally he can no longer fulfill the law. b) The causes which impede the fulfillment of the law are either present, proximate, or remote, according as the law urges at the very time when the cause is placed, or shortly after, or only after a notable interval of time. c) Causes of this kind can be placed either directly or indirectly; according, namely, as the agent is moved either by the end of withdrawing himself from the obligation of the law; or by another end, with the impediment of observing the law nevertheless foreseen. These things having been premised,

Resp. 1. He who places an exempting cause, even if it is done intentionally and directly, with the mind of avoiding the obligation, does not sin. He uses his right (I, 152; III, 1045; ed. G., II, p. 432).

2. It is never lawful directly to place or not remove an impeding cause, even a remote one. The reason: because as long as someone is subject to the law, he cannot will to infringe it without such a will being a violation of the law itself.

Therefore the excommunicated sin who do not seek absolution, precisely for this reason, lest once absolved they be held to paschal communion; likewise those who with this intention go away to a place where they will not be able to communicate in paschal time (III, 235; H. Ap., II, 20).

3. Nor is it lawful indirectly to place, or not remove, a present or proximate impeding cause, which in morals are equated, unless from another source there is present a proportionate just cause excusing. "For every law demands that, without a just cause, an impediment to its observance not be placed" (H. Ap., I, c.); for otherwise it would be finished with the law. But a just cause is one which has proportion both with the gravity of the precept and with the proximity of the impeding cause. See the things to be said n. 272, 273; cf. Sanchez, *Decal.*, I, c. 15, n. 4.
4. More probably it is lawful, even without a special reason, indirectly to place a remote impeding cause. The reason is, because the legislator is not judged to will to restrict liberty so much. For it would be too grave a burden if each one, long before the obligation of the law, were bound to omit all works incompatible with that obligation (Bucceroni, n. 221).
5. From these things you resolve: 1. He who, when the law is already urging, foresees that it will be the case that afterwards he cannot satisfy it, is held to fulfill it at the time when he can; for example, if on a feast day you cannot hear Mass about midday, or recite the Hours of the current day later, you are held to anticipate, because the precept already urges. It is otherwise if the time of the precept has not yet begun; for example, you are not held to anticipate

paschal time for communicating, nor to use the privilege of reciting Matins on the preceding day, in order to fulfill the precept (IV, 155; VI, 297).

6. He sins against the precept of assisting at Mass who, for the sake of pleasure, enters upon a journey on Saturday, foreseeing that it will happen that on the following Sunday he will not be able to hear Mass. But he is excused who undertakes a journey on Thursday for hunting, or on account of a similar non-urgent cause. The reason for the distinction is, because in the former case the impediment is judged proximate, and in the latter remote (III, 301).
7. Similarly from these things it can be determined whether and when, for example, it is lawful to undertake an office, service, etc., in which someone becomes impotent for sanctifying feasts; whether and how far it is lawful spontaneously to exercise labor, or undertake works of piety, by which a man becomes impotent for fasting; and other things of this kind (cf. n. 1235 and 1238 ff.). See the cases of conscience proposed by the distinguished Lehmkuhl, n. 97-103, likewise the things which the *Ami du Clerge* has often solved, for example, 1906, p. 982; 1911, p. 1121.

Corollary. From the notions here set forth we can understand what the words signify: to act in fraud of the law. Fraud against law can be done in innumerable ways; nevertheless he alone sins by fraud against law who places an impediment to the law, an impeding cause, and indeed in those circumstances where the law already holds him, or an impediment of such a kind that it is forbidden him by the law to place it. Thus fraud would be present if a rich man, beyond his condition or custom, occupied himself with servile works so that he might be tired, lest he ought to fast. But he will not be guilty of fraud who uses a right which is taken away from him neither by law nor by precept: for example, if someone passes into another diocese where the law of hearing Mass is not in force, or where exceptions are present as regards fasting, even if he does this for this end, that he may be exempted from the law: for the use of the right of departing is not interdicted to him by the law. But if this faculty also is taken away by the legislator, for example, as regards obtaining absolution from reserved cases, it is clear that fraud against the will of the Superior is present (cf. n. 206). Cf. D'Annibale, P. I, n. 176; Gopfert, I, § 13, n. 78.

Article III

On Dispensation

St. Alphonsus, I, n. 178; ed. G., I, p. 163; Suarez, *de Leg.*, l. 6, c. 18; Mazzotta, *de Leg.*, disp. 4; Billuart, Diss. 5; and celebrated Canonists.

227. DEFINITION. Dispensation is the relaxation of law, made for a time by legitimate authority, in some case in which otherwise the law would oblige.

It is said 1. It is the relaxation of law; for which reason it differs both from epikeia, through which it is declared that some case was never comprehended in the law; and from permission, through which only the violation of law is not impeded, for example, for avoiding a greater evil; and from license, by which law is rather fulfilled. For license is the consent of the competent Superior, under which the law itself concedes that something be done, for a few acts. Hence, if a Superior gives a nun license to go out from enclosure, or to make some expense, he does not dispense in the law or in the vow, but places the condition without which those things would not be lawful; because the law which prohibits going out and spending does not prohibit this absolutely, but only lest it be done without license. Cf. St. Alph., *de Privil.*, n. 1. - Law of itself tends to firmness; therefore of itself it does not generally admit licenses; nevertheless it sometimes foresees and tolerates them. Therefore, in those cases, if the Superior is absent, his license can be presumed; but dispensation is not presumed (Lehmkuhl, I, n. 266). Cf. below n. 239.

2. Made by legitimate authority; because dispensation is an act of jurisdiction, and therefore differs both from excuse on account of some extrinsic cause and from cessation of the law, which is said to be from within; in which cases the obligation of the law is taken away without a new intervention of the legislator, namely by force of the will which he previously had in making the law.
3. For a time, in some case; for which reason it differs both from privilege, which is perpetual and can be according to law, and from derogation and abrogation of law, through which the law is relaxed or taken away in perpetuity, for the whole community.
4. DIVISION. Dispensation can be: 1. Valid or invalid, according as it truly exempts from the obligation of law, or not.
5. Licit or illicit, according as it is obtained with a just cause or without a just cause.
6. Subreptitious or obreptitious, according as something to be manifested is kept silent in the petition, or, on the contrary, something false is asserted.

7. Total or partial, according as it exempts from the whole law, or from a part of the same.
8. Express or tacit, according as it is expressed in words, or is deduced from some fact.
9. Free or necessary, or obligatory, according as its concession merely befits on account of a just cause, or is owed by force of some title (cf. n. 241, q. 3).

But when a dispensation has been denied, although unjustly, the subject is held to the law, because it perseveres in being in force; unless such a cause urges as of itself exempts him from the law: for example, if the necessity of contracting marriage were urging, the denunciations having been omitted, and the Bishop unjustly denied dispensation (I, 179; H. Ap., II, 52). Nevertheless the dispensation is valid if, having been denied by the Superior, it is conceded by the inferior. Except if the Superior had willed to take this also away from the inferior. Lehmkuhl, *Cas. consc.*, 125.

With these things premised, we shall discuss a little more fully: 1. concerning the power of dispensing; 2. concerning the requisites for legitimate dispensation; 3. concerning the use and interpretation of dispensation; 4. concerning the cessation of the same.

§ 1. On the Power of Dispensing

229. NOTION. The power of dispensing is jurisdictional; for it is part of jurisdiction, or of public authority (St. Thom., 1.2, q. 97, a. 4).

And thus it differs both from the power of invalidating, which is only dominative and belongs to the master, father, husband, etc.; and from the power of declaring someone exempt from law, which is only interpretative of the will of the legislator, and belongs, for example, to the physician with respect to the sick, to the confessor with respect to penitents, etc. (cf. n. 138).

DIVISION. The power of dispensing is twofold: 1. ORDINARY, which belongs to someone by sole reason of his office, such as the legislator has in his own law, and his Superior or successor; 2. DELEGATED, which belongs to an inferior from the concession of him who is endowed with ordinary power.

But delegated jurisdiction can be conceded: a) by right, by reason of the dignity or office with which it is joined; and in this case it is equivalent to ordinary, and is called quasi-ordinary; b) by man, that is, by a Superior, in which case it is called purely delegated.

Moreover, this purely delegated power is given either absolutely for life, for a decade, for a year, etc., or at the nod or good pleasure of the person, or of the dignity (cf. n. 138, 3.).

Besides, it is sometimes conceded by way of grace, in favor of the delegate: in which way Bishops are accustomed to be given the faculties which they call quinquennial, by force of

which they can dispense in very many impediments of matrimony; sometimes by way of commission, in favor of a certain cause or of a certain person to whom the dispensation ought to be advantageous. The faculty of dispensing by way of commission can still be given in a twofold way, namely: either by way of a grace made, as they say, which happens when a true precept of dispensing is imposed on the delegate, "if, however, the prayers rest upon truth," as ordinarily happens in matrimonial dispensations, in which case the delegate who actually bestows the dispensation is said to fulminate it; or by way of a grace to be made, which happens when a precept of dispensing is not imposed on the delegate, but only the faculty of conceding a dispensation is given, "if namely it seems expedient." St. Alph., *de Privil.*, n. 13; ed. G., I, p. 192.

230. PRINCIPLES. I. Any legislator, or his Superior, or successor in jurisdiction, can dispense with his subjects, both in his own law and in the law of an inferior. The reason is, because things are dissolved by the same means through which their cause is born (Decret. Gregor., Reg. I); and the power of an inferior is subordinated to the power of a Superior. The case is excepted in which the law has passed into a contract; for pacts should be observed by all (III, 255).
231. II. No inferior can dispense in the law of a Superior, except from delegated power; namely insofar as the faculty of dispensing has been conceded to him, either by the Superior himself, or by right, or by custom. The reason is, because an inferior has nothing of power over the will of a Superior, from which the whole force of the law exists; whence it is said in the Clementines: The law of a Superior cannot be taken away through an inferior (c. *Ne Romani, de Elect.*).
232. III. No delegate can subdelegate another, unless the faculty of subdelegating has been conceded to him, either by the Superior or by right. The reason is, because the power of using jurisdiction is diverse from the power of

delegating it, and the one is not included in the other.

We say 1. Unless it has been conceded by the Superior; for this is not rarely conceded. Thus, besides the faculty of dispensing, the power of subdelegating this same faculty to other suitable priests is often conceded to Bishops.

2. Unless it has been conceded by right. Now, the power of subdelegating is conceded by right:

- a) To one delegated by a Prince, for example, by the Supreme Pontiff, by the Sacred Congregations, by way of office, as to Nuncios, Legates *a latere*. We say by way of office; so that delegates who would have been chosen on account of their skill may thus be excluded, as also those whose delegated faculty is a bare ministry, or simple execution.
- b) To one delegated, although not by a Prince, to a universality of causes;⁷⁷ provided that the delegation has been made to him by way of office, or at least by way of privilege annexed in perpetuity to his office or dignity. Thus, for example, a vice-pastor, universally deputed into the place of an absent or dead pastor, can subdelegate another. Yet this subdelegation cannot be for the whole, but for one or another cause only, as is common with St. Thomas (Quodl. 12, a. 22): "A vicar cannot communicate his whole power, but he can communicate part" (H. Ap., XVI, 82; 2 El. q. reform., n. 4).

As St. Alphonsus rightly notes, VI, 566; ed. G., III, p. 583: confessors furnished with peculiar faculties cannot subdelegate, and the same holds for missionaries. The reason: they are deputed only to the bare exercise of ministry.

233. IV. A delegated faculty can cease for many reasons.

Namely it ceases: 1. by revocation of the one delegating, which nevertheless does not obtain effect unless it is notified to the delegate; 2. by renunciation of the delegate accepted by the Superior; 3. by lapse of the determined time, or when the business is finished, or when the number of cases for which the delegation had been conceded is exhausted. But all special faculties habitually conceded by the Holy See to Bishops and other ordinaries of places are not suspended by their death or cessation from office, but are extended to ordinary successors (Holy Office, Nov. 24, 1897).

But whether it ceases by the death or removal of the one delegating, a distinction must be made. It ceases if it was conceded BY WAY OF GRACE in favor of the delegate, with these or other similar words: at our good pleasure, until it shall have pleased us; otherwise, if it was conceded for a determined time, or until it is revoked, or at the good pleasure of the dignity, for example, of the Holy See, of the Bishop, because a dignity does not die.⁷⁸ But if it was conceded IN THE FORM OF COMMISSION for a certain case, again a distinction must be made: conceded as a grace to be made for a special case, it ceases by the death or removal of the one delegating, if the matter is still untouched; but conceded as a grace made to the petitioner, it does not cease, although the matter has not yet in any way been entrusted to execution (cf. n. 246).

234. From these things it follows: I. The Supreme Pontiff can dispense: 1. in all ecclesiastical laws, even in those which the Apostles, as particular prelates of Churches, established: of which kind are the Lenten fast, the observance of Sunday, the irregularity of bigamy, etc. (H. Ap., II, 55; *Istruz.*, II, 64); 2. in certain divine laws, in which divine right arises from human will, such as vows and oaths, if, however, a sufficient cause is present. But in other divine laws, he can only interpret, or declare, the divine will (cf. n. 135).

II. BISHOPS can dispense: 1. By ordinary right: a) in all episcopal and synodal statutes,⁷⁹ independently of the chapter and clergy (Bened. XIV, *de Syn.*, l. 13, c. 5, n. 7); b) in the laws of a provincial council, provided they are not specially reserved to the council, or confirmed in specific form by the Holy See; for this is expedient for good governance (Gennari, *Quest. de Droit can.*, q. 328); c) in laws made by the Supreme Pontiff for that particular diocese, in which the faculty of dispensing seems to have been left to the proper prelate (I, 190; VI, 902; H. Ap., II, 57).

In general ecclesiastical laws Bishops generally cannot dispense.⁸⁰ Nevertheless, from the decree of the Holy Office *Cum recenter*, they can sometimes dispense in the law of fasting and abstinence (cf. n. 1240).

2. By quasi-ordinary right, in the following cases: a) in doubts whether a dispensation is necessary or not; for then the Bishop, and any inferior prelate, can either declare that the law does not oblige in the case, or dispense for caution

⁷⁷It is one thing to be delegated to all matrimonial business, say to the examination of spouses and other things, another thing to be delegated to a universality of matrimonial cases, so that the delegate can assist indeterminately at all marriages. If the first, certainly the power of subdelegating is present, as is said here; if the second, this is given only probably. Wouters, *Comment. in decret. Ne temere*, p. 51.

⁷⁸Some doubt, however, whether jurisdiction, or the faculty of dispensing, ceases in the case in which it is given: at our good pleasure. Cf. Noldin, III, n. 348, who cites the response of the Sacred Congregation of Bishops and Regulars, June 19, 1866.

⁷⁹Except if the law, made by a Bishop, has passed into a contract, as St. Alph. says, I, 190; ed. G., I, p. 169. Cf. the things said n. 210 at the end.

⁸⁰See St. Alph., I, 191; ed. G., I, p. 171 and 2 El. q. reform., n. 3. There he altogether rejects 1. that a Bishop from himself can generally dispense in universal laws, custom excluded; 2. that a Bishop has in his diocese rights equally ample as the Supreme Pontiff in the whole Church. To the norm of this n. 191 those things which are read VI, n. 980; ed. G., IV, p. 155, are to be reformed.

for the quiet of souls; and the dispensation, once given, is valid even if afterwards it were discovered that it had certainly been necessary; b) in particular cases which frequently or regularly happen, as in non-reserved vows, in fasts, feasts, canonical hours, abstinence from meats, and similar things: for it would be too grave a burden if in cases of this kind, which frequently occur, individual faithful had to recur to the Holy See; c) in a case of urgent necessity, or of great utility, when easy access to the Pope is not open, and there is danger in delay, as, for example, in impediments of matrimony, in irregularities, in reserved vows; because this is expedient for the common good, and this even if easy access is given to one having the faculty of dispensing from privilege of the Pontiff; d) if it is said in the law: until dispensation is given; for “an inferior can dispense in the laws of a Superior, if dispensation is generally permitted in the law” (St. Alph., l. c.).

3. By special and delegated right: namely, besides the ordinary faculties of dispensing which we have numbered here, most Bishops possess special quinquennial or triennial faculties communicated by the Sacred Penitentiary; indeed certain Bishops obtain very ample faculties from the Sacred Congregation of Propaganda Fide.

Here, however, let it be noted: a) Ordinary faculties, since they are at hand to Bishops by force of office, can be given to others by delegation; and when the see is vacant, the chapter, or the capitular Vicar, enjoys them. But the Vicar general does not possess them of himself. Indeed, by his general mandate ordinary dispensations are not committed to him, because they savor of grace, but they are if he is specially delegated to this by the Bishop (III, 288; ed. G., I, p. 559).

- b) As regards special faculties, since they are customarily communicated to the Ordinary, they pass to successors, for example, the capitular Vicar. In view of the response of December 17, 1898 (A. S. S., 31, p. 384), by which an end was imposed on the controversy, these special faculties also, without special concession, can be subdelegated to Vicars general and other ecclesiastical men, in a general way or for a particular case, provided this is not prohibited in the faculties, nor the right of subdelegating restricted only for certain ones: for in this case the form of the rescript must be observed exactly.⁸¹

III. PASTORS, in many places, have from custom the faculty of dispensing, even if recourse to the Bishop is easy, in small and frequent necessities; but since they are endowed with this faculty only by force of custom, they can dispense only in those things concerning which usage has been introduced, as in fasting, abstinence, and works prohibited on a feast day (III, 288, 1032; H. Ap., II, 59).

IV. CONFESSORS in several dioceses, from special delegation, have the power of dispensing in various cases for which recourse to the Bishop would be required of itself.

V. PRELATES OF REGULARS possess rights which will be set forth below, n. 2187 and 2189.

Note, however, that those rights can be exercised only by those who are capable of jurisdiction: whence they do not belong to Superioresses, who cannot dispense (IV, 53; ed. G., II, p. 485). It must also be noted (Holy Office, Dec. 20, 1900) that faculties conceded by the Holy See to Superiors General of religious Orders do not cease on account of their death, or cessation from office, but pass to successors. The same principles are in force here as for rights conceded to a Bishop.

235. Questions. IT IS ASKED 1. With whom, therefore, can a Bishop dispense?

Resp. I. He can with all those who are subject to his jurisdiction. Therefore: with inhabitants, and indeed everywhere on earth; with newcomers, as long as they have quasi-domicile in that territory; with wanderers, as long as they are staying in the diocese, otherwise they could obtain necessary dispensations from no Bishop.

A Bishop, however, nor any delegate, cannot, for example, as regards fasting, dispense with heretics who would wish to abjure, but would desire to postpone conversion. Cf. Genicot, *Cas. consc.*, I, p. 23.

A fortiori he cannot dispense with exempt religious, without the consent of Superiors. If, however, universally, in the name of the Supreme Pontiff, he dispenses in common law, the obligation is suspended also for exempt persons, unless they are held by a special vow or rule (Holy Office, 1871; A. A. S., IV, p. 626). But if exempt persons do not observe the statutes of the rule or a vow, they will no longer sin against a precept of the Church, since dispensation has been given, but against a particular statute.

- II. With travelers, if rigorous principles are established, a Bishop cannot dispense; for they are not truly subject to episcopal jurisdiction (n. 206). They would become subjects if, ending their journey, they chose quasi-domicile in the diocese. Thus St. Alphonsus (I, n. 158; ed. G., p. 138), and others solve the question.

⁸¹Indeed, since faculties given to Bishops for a time are directed to Ordinaries, although verbally they are conceded to the Bishop (Holy Office, Sept. 5, 1900), they are of themselves given by the Holy See to Vicars general, nor do they need subdelegation of the Bishop. Cf. Ojetti, *Synopsis*, v. Delegation; Genicot, I, n. 119; II, n. 523, at the end.

Nevertheless the rigor of this opinion is quite probably tempered for cases of necessity. Then the traveler, through his coming, is subject to the authority of the Bishop of the place in which he is found. Therefore, when necessity stands, the Bishop can dispense with him in canonical laws, in vows, in oaths, etc. For it is prudently presumed that the Pope or the Bishop of the traveler consents that the Bishop of the place dispense with a traveler of this kind (Mazzotta, tr. 1, disp. 4, q. 1, c. 3, q. 2.).

Note. Many modern authors indeed think otherwise (Lehmkuhl, I, n. 260; Noldin, I, n. 182; Genicot, I, n. 121). But in view of the intrinsic reason indicated above, and in view of the response of the Holy Office, Nov. 22, 1865 (*Coll. S. S.*, n. 910), it is pleasing to restrict the aforesaid rights of the Bishop over travelers to cases of necessity.

236. IT IS ASKED 2. Whether one having the faculty of dispensing with others can dispense with himself?

Resp. Affirmatively with St. Thomas (2.2, q. 185, a. 8) and others, provided he has a universal power of dispensing, not restricted to a case or person. The reason is, because voluntary jurisdiction, or grace, can be exercised toward oneself. Therefore he who uses this jurisdiction will be able to dispense with himself in vows, ordinary ones indeed, as St. Alphonsus thinks (III, n. 256; H. Ap., II, 64). He will also be able so to order the matter that he commits the faculty of dispensing to a prudent man, to be applied to himself, the prelate.

§ 2. On the Requisites for Legitimate Dispensation

For legitimate dispensation, that is, for dispensation which is at the same time valid and licit, several things are required: either a) on the part of the one conceding, or b) on the part of the one asking, or of the subject to be dispensed.

237. PRINCIPLES. I. For valid dispensation there is required, on the part of the subject to be dispensed: that the petition be neither subreptitious nor obreptitious, as regards the motive causes set forth, and that the dispensation be accepted by the one dispensed. The reason: otherwise the will of the one conceding is lacking (cf. n. 239).

We said 1. That it be neither subreptitious nor obreptitious, in the sense explained above, n. 228.

But in matrimonial matters, although the Sacred Congregations require that all things be faithfully declared, nevertheless a dispensation is valid if, for a lesser degree, a greater is indicated. See the things to be said n. 2051, 4. Cf. Genicot-Salsmans, II, n. 524.

2. As regards the motive causes set forth, but not as regards impulsive causes.

For motive causes are given, which pertain intrinsically to the matter, and render the dispensation legitimate and fitting in itself, for example, poverty alleged so that someone may be freed from a vow of giving 1000 gold pieces. Impulsive causes are also given, which, taken from extrinsic circumstances, dispose the Superior toward the act of dispensing, for example, nobility alleged so that someone may more easily obtain a dispensation.

But go to the point: Falsity and reticence then only render a dispensation invalid if they regard motive causes, because the consent of the Superior depends on truth, which in these alone is sought and required (I, n. 185).

These things are rightly said if the matter concerns a dispensation given. But if someone is committed to giving it, and he discovers that falsity is present in the impulsive causes, he ought to recur again to the one delegating, so that he may licitly use the faculties. Lehmkuhl, I, n. 265.

3. That the dispensation be accepted. The reason: ordinarily the Superior intends to make a grace only to one consenting. These things Sanchez, Wernz (apud Linz. *Quart. Schrift*, 1911, p. 127), and this opinion is more common and more conformable to the decrees of the Holy See. Therefore, if a dispensation is sought for one not knowing or unwilling, it is necessary that his consent be added (I, 186, 10.).
4. From these things you will gather: 1. A dispensation granted from a true cause to some wicked man whom the one dispensing judged upright is valid, although it would have been the case that he would not have dispensed if he had known his wickedness. The reason is, because uprightness is not held as a motive cause, but merely as impulsive; unless the opposite is positively clear.
5. A dispensation is valid if, among several false causes, one true cause is alleged which suffices for dispensing. Likewise, in doubt whether a cause obreptitiously alleged was motive or impulsive, true or false, sufficient or insufficient: because after the fact one must stand for the value of the act.
6. A dispensation is valid if a cause, false at the time of petition, has become true at the time of concession; but not vice versa (cf. n. 2052). Hence it is valid, for example, if in the rescript of the one dispensing an error has crept in from the carelessness of an amanuensis; because it supervenes upon a concession already made. Cf. Pyrrh. Corrad.,

Praxis dispens. Apost., l. 7, c. 6, n. 24. If the matter concerns a grace to be made, the causes ought to be true at the time when the commissary fulminates the dispensation.

7. A petition does not become subreptitious for this reason, that before a Superior of higher Order the denial on the part of the Superior of inferior grade is kept silent.
8. II. For valid dispensation, on the part of the one conceding, it is required that he could and willed to dispense. The reason is clear of itself.

It is required 1. THAT HE COULD, according to the things set forth n. 230 ff. Wherefore it must be noted that a subaltern Superior cannot validly dispense in the law of a Superior without a just cause; because he is not presumed to have received the power of dispensing rashly and inequitably. It is otherwise, however, if a Superior wills to dispense in his own law or in the law of an inferior; because the law itself depends entirely on his will. It must be noted besides that the faculty of dispensing has not been taken away from a subaltern Superior by the fact that his Superior denied dispensation to the one seeking it. Except if his express will as regards this is clear.

Hence: 1. The Supreme Pontiff dispenses validly, but a Bishop invalidly, without a just cause, in the common law of the Church, for example, in fasting, abstinence, etc. Therefore St. Thomas rightly teaches (*Quodl.* 4, 13, c. fin.) that the Pope can dispense that a priest consecrate the Body of Christ without sacred vestments.

2. In the law of God, for example, in vows and oaths, a dispensation made without cause is always invalid (cf. n. 135, 1.). But if a cause is indeed present, yet insufficient, the dispensation will be valid when some commutation has been added (III, 254; H. Ap., V, 40).
3. A dispensation is valid if a subaltern Superior dispenses even in bad faith, judging that a cause does not underlie, which nevertheless in reality exists. On the contrary, it is invalid if he thinks that a cause underlies, which in reality does not subsist, or certainly does not suffice; because the value of the dispensation does not depend on knowledge, but on the existence of the cause, so that the good or bad faith of the one dispensing makes nothing to the matter. Thus St. Alphonsus with Palaus, against Busenbaum and others (I, 181; III, 251; H. Ap., II, 53).

It is required 2. THAT HE WILLED, and signified his will in some way, as is commonly taught. Whence a dispensation presumed concerning the future is not valid, for example, if he knew, he would dispense; because a future will, or one which would be, is not absolutely a will, and therefore does not suffice for dispensation from law, as being strictly to be interpreted, although it suffices for license, as being broadly to be interpreted. Moreover, in matters of lesser moment, one can sometimes proceed more easily by way of *epikeia*.

Nevertheless, a tacit dispensation is valid, namely from a just presumption of the present will of the Superior. Thus, for example, a Superior who sees a subject act against the law and does not correct him when he could easily do so, is judged to dispense; because in these circumstances, if he does not will to dispense, he is held to speak. But it is otherwise if he cannot correct without inconvenience (I, 187; H. Ap., II, 49).

Note. 1. A dispensation mentally conceded to an absent person is not valid, unless the dispensed person has been made more certain that the one conceding, at such an hour, for example, after he had sought from the Superior the faculty of dispensing, fulminated the dispensation. This mode of acting is full of dangers: whence ordinarily illicit (*Gennari, Quest. de mor.*, q. 262).

2. A dispensation extorted by fear is valid, whenever a just cause of dispensing exists: provided it is not clear that the Superior dispensed without the mind of dispensing; for fear does not take away the voluntary. Nor is it illicit to obtain a necessary dispensation through fear, provided fear is justly struck, for example, by threatening recourse to a Superior if the inferior denies dispensation (I, 184; H. Ap., II, 54).

Do not, however, extend the things here set forth to absolution from censures, which, if it has been given under the influence of fear unjustly struck, is invalid (n. 1287).

240. III. For licit dispensation, both in the one conceding and in the one obtaining, a just cause is required. The reason for the former is, because otherwise the Superior commits acceptance of persons, and gives occasion for complaints, while one is exempted from law without cause, but others are pressed by the same (I, 178). The reason for the latter is, because otherwise the subject asks for an illicit thing, and is guilty of that sin to which he induces the Superior. Cf. Lehmkuhl, *Cas. consc.*, n. 118.

Things to be noted. 1. A Superior can sometimes, from a just cause, concede that which is sought without a sufficient cause. Thus, for example, an undisciplined religious who seeks without cause a relaxation of his simple vows can be dispensed by the Superior on account of the common good, and is in reality released from the vows.

2. The sin of a primary Superior who dispenses without a just cause in his own law, with scandal and notable damage of others excluded, does not exceed venial, because acceptance of persons is not of itself grave fault (I, 178).

But a Superior of inferior grade, if he dispenses in the law of a Superior without cause, except if smallness of matter is present, sins mortally. The reason is usurpation of a power not conceded to him, and especially disturbance of order, from the fact that the subject uses an invalid dispensation (cf. n. 239). St. Alph., I, 180.

3. A just cause of dispensing is that which is proportioned to the gravity of the law from which dispensation is given. Nor, however, is a cause so grave required that it already of itself exempts from the law. It is enough if it is such that the one to be dispensed can be exempted from the common obligation without acceptance of persons. For some causes of themselves excuse from the precept, say of fasting, of the Divine Office, etc.; and these do not need dispensation, if they are certainly or at least probably just (cf. n. 173). But others suffice for dispensation, yet need it. CAUSES of this kind, indeed to be weighed by prudent judgment, are generally either necessity, for example, scandal to be avoided; or piety, for example, copious alms in aid of the Church, as practice bears for matrimonial dispensations; or finally utility, whether common or private. Indeed, a sufficient cause can be the dignity of the one asking, because it pertains to the good of the Church to have eminent persons grateful; or even the dignity of the Superior, that he may show himself benign. This also must be noted, that if several causes are present, of which none suffices separately, all can suffice together (I, 195).

4. Questions. IT IS ASKED 1. Whether, when a just cause stands, the Superior is held to dispense?

Resp. Distinguish. 1. If the cause is only sufficient so that dispensation is licit, but not owed, the Superior can concede it and deny it, or concede it to one and deny it to another; because just as dispensation is expedient for the good of the subject, so also the observance of law is expedient for the common good.

2. If the cause is such that it renders dispensation owed or necessary, the Superior is held to dispense. Otherwise he would sin, gravely or lightly according to the matter (I, 179; H. Ap., II, 52).

And here it must be noted that dispensation is owed either from the disposition of right, which, when such a cause exists, decrees that it must be granted; or from the necessity of the common good, for example, for preventing scandal; or from justice, for example, for avoiding grave danger of soul; or finally from charity, when someone much needs dispensation, and this can be conceded without detriment to discipline.

IT IS ASKED 2. Whether it is lawful for a subject to seek, and for a Superior to concede, dispensation from a doubtful cause?

Resp. 1. It is lawful TO SEEK, and once dispensation has been obtained, the subject can be secure, if he has set forth the cause in good faith; because it belongs to the Superior to judge concerning the sufficiency of the cause (I, 186). But what if he obtained it illicitly? See n. 244.

2. It is lawful TO CONCEDE, in doubt whether the cause is sufficient; because the power of dispensing, unless it is of mere commission, is to be interpreted broadly; and, in doubt, the one dispensing is not obliged to an examination concerning the full sufficiency of the cause. But it is otherwise in doubt whether some cause is present. Yet in each doubt, the dispensation made is presumed valid, until the truth appears to the contrary (I, 178, 192; cf. III, 251; ed. G., I, p. 534).

Note. Since the doubt here concerns the existence of the cause of dispensation, the conclusion concerning the validity of the dispensation had to be different from before, n. 234, II, b, where the doubt concerns the cases themselves, whether namely they need dispensation.

§ 3. On the Interpretation and Use of Dispensation

242. I. INTERPRETATION, in the matter of dispensation, is made according to the following rules:

1. THE POWER OF DISPENSING, even delegated, since it is favorable to the public good, is to be interpreted BROADLY (cf. n. 253, 2.). Except if it has been conceded to someone by way of commission for a certain case; because then it falls back into the dispensation itself, and must be interpreted in the same way as that (I, 187).

He who has received the faculty of dispensing as a missionary can use it for the whole time of the missions, even on the journey; he who has obtained it as a confessor can exercise it even outside Confession, but only toward those over whom he possesses jurisdiction of the internal forum (Noldin, I, n. 166). Some add that the confessor can do this also in favor of travelers.

2. THE DISPENSATION ITSELF, since it is odious and a wound of the law, is to be taken STRICTLY. Whence if it is doubted whether a dispensation extends to these or those circumstances, it is judged not to extend. Except, “unless the dispensation is owed, or is from the motion proper of the prince, or is inserted in the Body of Law, or finally unless it is conceded to a community, for the common good.” For in these cases it is held for a favor and must be taken broadly (I, 194). See the very useful case in Lehmkuhl, *Cas. consc.*, I, n. 120.

A dispensation is said to be given *motu proprio* when it is conceded with no preceding petition, or at least independently of it, if any perhaps preceded. Now indeed: 1. If no petition at all preceded, a dispensation conceded *motu proprio* is to be interpreted in such a way that it is held valid, even if in the rescript of the Superior some true circumstance, and otherwise necessarily to be expressed, is kept silent.

2. If some petition preceded, it is controverted whether the clause *motu proprio* has the aforesaid efficacy (cf. Salmant., tr. 18, c. I, n. 73-80).
3. II. As regards the USE of dispensation, it must be noted that this use is sometimes defined by a determined place, and sometimes is circumscribed by no limits. For just as there are given local laws and personal laws, so there are given also local dispensations and personal dispensations.
4. If a dispensation has been given for some determined place, for example, if some diocese has been dispensed from a law which obliges Christians within Lent to abstain from eggs and milk foods, all who are staying in that diocese can use the dispensation, whether they are inhabitants, travelers, or wanderers; but no one outside the territory of the diocese. The reason is, because the dispensation was conceded from a special necessity of the diocese, and therefore as it were adheres to the diocese.
5. If someone personally has been dispensed in a universal law, either by the legislator himself or by his delegate, he can use the dispensation everywhere. Thus, for example, one dispensed by his Bishop in the law of abstinence can eat meat even outside his own diocese. The reason is, because the Bishop dispensed in the name of universal authority, and because the dispensation conceded is judged to have been conceded on account of a personal motive, which clings to the bones (cf. n. 1247).
6. IT IS ASKED. Whether he sins who uses a dispensation indeed VALID, but ILLICITLY obtained?

Resp. Probably he does not sin; because, although he acted fraudulently, for example, by mendaciously setting forth impulsive causes, or by striking unjust fear, nevertheless since the dispensation is valid on account of a motive cause, as is supposed, he himself is now no longer under the law (I, 178; H. Ap., II, 46).

§ 4. On the Cessation of Dispensation

245. The cessation of dispensation can happen in three ways: 1. through cessation of the cause; 2. through revocation by the one dispensing; 3. through renunciation by the one dispensed.

I. A dispensation, or a commission of dispensing, regularly ceases when the MOTIVE cause ceases TOTALLY and CERTAINLY. Thus, for example, the dispensation from not fasting, conceded to you at the beginning of Lent on account of illness, expires when you have fully recovered. But it endures when only the impulsive cause ceases, because this was not the reason of the dispensation; likewise, if the motive cause ceases only partially, because in the remaining part there still remains a sufficient reason of dispensation; likewise, if the motive cause ceases doubtfully, because in doubt possession stands for the dispensation (I, 196; H. Ap., II, 66).

We have said: REGULARLY; for, even when the motive cause has ceased totally and certainly, the dispensation does not therefore cease: 1. if the dispensation has already obtained its effect, for example, if the one dispensed for obtaining a benefice has already obtained it; 2. if some onerous commutation has been added to the dispensation, for example, payment of money; 3. if the dispensation has been given absolutely, that is, without that tacit condition “if the cause endures,” namely when it is conceded from a cause which of itself is perpetual, or is judged perpetual, for example, on account of scarcity of priests, on account of honesty of morals, on account of poverty of parents, etc.: for once the obligation of law has been removed through such a dispensation, this obligation, according to a sufficiently probable opinion, does not return unless it is imposed again by the Superior (I, 195; Salmant., *de Leg.*, c. 5, n. 87).

This also must be noted, that a dispensation given ABSOLUTELY is not exhausted by one act, unless it has been conceded for a special case. Thus one dispensed from a vow of chastity for contracting marriage can, when his spouse has died, pass to second nuptials; provided the dispensation was not given for that case alone, for example, for taking a virgin deflowered by him (I, 196; Lehmkuhl, I, n. 269).

246. II. A dispensation ceases through REVOCATION by the one dispensing, notified to the one dispensed (cf. 233, 1.). Yet in this case a distinction must be made: 1. If revocation is made by a Superior in his own law, it is valid, even if without

cause; because obligation and de-obligation depend on the will of the legislator. Yet he who thus revokes sins, but lightly, because he acts inordinately. 2. If revocation is made by a secondary Superior or by a delegate, when a just cause of revoking is lacking, it is not only illicit, but also invalid; because the faculty of revoking is not in his arbitrary power (I, 197; H. Ap., II, 67).

But whether a dispensation ceases by the death of the one conceding? Resp. It depends on the terms of the concession. If it has been conceded absolutely, or with the clause until it is revoked, or at the judgment of the Apostolic See or of the Bishop, IT DOES NOT CEASE. But otherwise, if it has the clause until it shall have pleased us, or at our judgment; provided, however, that the matter is still untouched, say if the confessor has not yet begun to hear the confession of the one dispensed (cf. n. 233).

247. III. A dispensation ceases through RENUNCIATION of the one dispensed, provided the renunciation has been accepted by the Superior. The reason for this is, because, although a subject can yield his own right, if the renunciation does not redound to the damage of another, nevertheless only the Superior, in his own law, can bind again the will which he had rightly and validly released from the law.

Thus, for example, if Peter, having obtained a dispensation for marrying a blood-relative, married a stranger, he can, when his spouse has died, marry the first woman; provided the Superior has not revoked the dispensation. Likewise, he who obtained a dispensation from reciting the Divine Office, from observing the fast, can use the dispensation, even if meanwhile he has observed the law of the Office and fast (I, 198).

Scholium

On Doubt Concerning the Necessity of Dispensation

248. What is to be done, you will ask, in doubt WHETHER THE CASE NEEDS DISPENSATION?

Resp. 1. If the doubt is OF RIGHT, that is, if it is doubted whether the case is comprehended in the law, whether the doubt is negative or positive, a dispensation is not required, because this is the same as doubting concerning the law itself, whether it has been imposed for that matter. "Therefore the subject can use his liberty. Nevertheless it is more advisable then to approach the prelate who may declare or dispense; since in such a doubt even an inferior prelate can well dispense, without concession of the legislator" (cf. n. 55). See St. Alph., I, 192; ed. G., I, p. 172; cf. Salmant., tr. XI, c. 5, n. 45, whose doctrine he reports.

2. If the doubt is OF FACT, that is, if you positively doubt whether there is present a cause excusing from law, for example, for exercising servile work on Sunday; or even whether the cause which you have is sufficient for excusing you, dispensation is of itself necessary; because, in each case, the law possesses antecedently to your liberty, and therefore it is truer that you are held to the law.⁸² Yet it would be otherwise if it were truly and uniquely probable that the cause is sufficient, or grave enough, to exempt you; or if another principle were added, for example, the natural and certain right of preserving health, etc., in the case in which it is feared lest observance of the law is going to harm gravely. Recall the things said n. 223, 241, q. 2. Cf. St. Alph., III, 1036.

Note what the Holy Doctor writes, III, n. 1049 at the end; ed. G., II, p. 439: "If someone does not have a cause absolutely sufficient for excusing him from fasting, and some probable and just reason appears to him, by which he fasts only twice or thrice in the week, he is not to be urged to fast, even if that cause does not altogether suffice, but he is to be left in his good faith, lest perhaps afterwards he culpably omit all fasts."

If the matter concerns dispensation over impediments of matrimony, see n. 2046.

Article IV

On Privilege

St. Alphonsus, *de Privil.*; ed. G., I, p. 187; Suarez, *de Leg.*, l. 8, c. 1 and 22; Salmant., tr. 18.

⁸²Behold the words of St. Alphonsus, I, n. 97; ed. G., I, p. 77: "Whatever Salas may say, it is truer that you are held to the law; because then the law possesses antecedently to your liberty." Cf. I, 99; III, 1032, 1049; H. Ap., XII, 34; *Conf. dir.*, XII, 10.

249. DEFINITION. Privilege is defined: A private law conceding some special benefit. It is called law, not indeed imposed upon the privileged person, in regard to whom it is a grace, but upon the community, which is held not to impede the use of the privilege. Whence it is of itself a stable right, and if it is limited to a few acts, or to a brief time, this is beside the nature of privilege. It is said: private, because privileges are regularly communicated with private persons; conceding a special privilege, because it is either against or beyond right.

DIVISION. Privilege is distinguished in many ways:

1. By reason of matter, there is had: a) a privilege against right, or beyond right, according as through it derogation is made from some law, or not. Thus, for example, exemption from the jurisdiction of the Ordinary is a privilege against right; the power of dispensing is beyond right. There is had b) a privilege either favorable, which confers a convenience upon the privileged person and brings inconvenience to no one, for example, the privilege of hearing Mass in time of interdict; or odious, which confers convenience on one and prejudice on another, for example, exemption from taxes, which burdens others (cf. n. 253, 2.).
2. By reason of the subject to whom it is conceded, privilege is real or personal. That is called real which is directly conceded to some thing, office, or condition distinct from the person: for example, to some altar, so that a plenary indulgence, applicable to the dead, may be obtained by the one celebrating upon it; likewise to a Bishop as such, or to his see or office, or to some community. Personal is that which is immediately given to a person by reason of himself, as the privilege of absolving from reserved cases conceded to some confessor.
3. By reason of cause, privilege is gracious or remuneratory, according as it is conceded without any respect to merits of the privileged person or of others, for example, parents, or on account of them. Again, it is conventional or pure, according as it is obtained with some pact intervening, or without this intervening.
4. By reason of form, privilege is of the living voice or written. A privilege of the living voice is that which is conceded orally, although, for obtaining faith in the external forum, it is consigned to letters and fortified by authentic testimony. A written privilege is that which is obtained through authentic writing. It is of diverse authority, according as it is enclosed in the Body of Law, or inserted in the Body of common right, as, for example, the privileges of Churches and clerics; or given outside the Body of Law, through a special rescript (Gennari, *Quest. de droit can.*, q. 452).
5. By reason of duration, privilege is perpetual or temporal, according as it is conceded of itself without limit, or with limit, for example, for seven years, as long as I shall live, etc. (cf. n. 233).

There are some privileges which are conceded first and of themselves, without respect to others to whom the same privilege perhaps has already been given; and there are others which are conceded after the likeness, that is, according to the mode in which they have already been conceded to another. If these last are given equally principally, they are not changed, however much the privileges after whose likeness they were being conceded are increased or decreased; if they are given accessorially, indirectly, they take upon themselves the changes of the privileges first conceded.

With these things premised, we shall say a few things: 1. concerning the acquisition, 2. concerning the use, 3. concerning the interpretation, 4. concerning the cessation of privilege.

§ 1. On the Acquisition of Privilege

250. Privilege is acquired either directly, through the concession of a Superior or through legitimate custom; or indirectly, through communication.

1. DIRECTLY. It belongs to legislative power, and to that alone, to concede privileges: both because the legislator alone can exempt from laws, and because others are to be obliged not to impede the privileged person in the use of the grace. A privilege against right can be conceded by a legislator only to subjects, because it imports dispensation; whence, against common right, the Pontiff alone is able to grant privileges. But privileges beyond right can be conceded even to non-subjects, because such a concession is after the likeness of a donation (Bened. XIV, *de Syn.*, l. 7, c. 9, n. 3).

“In order that a privilege derogate from common right, a DEROGATORY CLAUSE is not required; for the prince is presumed already to know the common laws. Nevertheless, exception is made: 1. if the privilege could not obtain its effect without this express derogation; 2. if in the law from which derogation is made there was appended the clause: notwithstanding any privilege whatever; this is understood provided that in the privilege there is not present the clause: from certain knowledge, or from fullness of power; 3. if the privilege is against some custom, or municipal or local law: for these are not derogated unless special mention is made of them” (*de Privil.*, n. 2).

2. INDIRECTLY. Privilege is acquired through communication, when a Superior extends a privilege conceded to one also to another; thus, for example, among Mendicant Orders there is made a communication of privileges (ibid., n. 9).

There is given a twofold COMMUNICATION, namely in common or ordinary form, and in special or extraordinary form. Through communication in common form only those privileges are customarily conceded which are of easy concession, according to the rule of right: "In a general concession there do not come those things which one would not plausibly be about to concede in species." But through communication in special form all and singular privileges are conceded, even unusual ones and those which are of rare and difficult concession.

The signs from which this special form is recognized are had in certain clauses which, even from most ancient time, are customarily employed in Apostolic concessions; such as: from proper motion, from certain knowledge, from fullness of power, in like manner, equally and principally, etc. (ibid., n. 5).

§ 2. On the Use of Privilege

251. The privileged person is not held of himself to use his privilege; for no one ought necessarily to use his own right.

Nevertheless he is held per accidens: 1. if from non-use he would be about to bring grave damage upon his neighbor; thus a confessor having the privilege of absolving from reserved cases, after confession has been heard, is held to use it; 2. if the privilege yields to the common good, as ecclesiastical immunity; 3. if through the use of the privilege the observance of a precept becomes possible: thus a sick man who has the privilege of a private oratory, and can easily hear Mass on a feast day, is held to use it so that he may hear Mass of precept;⁸³ 4. if the privilege is real, attached to a place, dignity, or state, as are privileges conceded to Bishops and regulars (ibid., n. 3).

Note. He who has a privilege for the forum of penance, of absolving from censures and ecclesiastical penalties, very probably can use it even outside the sacrament, even if the faculty was conceived in these terms "to a priest confessor." For these words strictly denote a priest approved for confession, but not one hearing confessions (ibid., n. 4).

252. You will ask. Whether and when privileges ought to be manifested to Ordinaries of places?

Resp. Privileged persons are held to exhibit to Ordinaries of places their privilege, or a trustworthy copy of the same: 1. although not required, and before they can use them, if the matter concerns privileges with the clause: the Ordinaries of places having been made more certain, or concerning new indulgences to be published; 2. when required, yet without meanwhile being able to be interdicted from the use of the privilege, if the matter concerns the privilege of exemption of some religious Institute, where that would not be sufficiently notorious. Nevertheless the Bishop cannot require the whole codex, but only the privileges concerning which he doubts: whence he ought to indicate the cause why he asks.

It suffices that exempt persons hand over to the Bishop a transcript, signed by the Superior (Provincial) and furnished with a seal, with the note: that it agrees with the original. If the privilege is notorious, let the source be indicated to the Bishop where he will be able to read the public document.

Note. Regular prelates can take away or limit the use of privileges for subjects (ibid., n. 6, at the end).

§ 3. On the Interpretation of Privilege

253. The interpretation of privilege is made either authentically or doctrinally.

1. AUTHENTICALLY, the prince can interpret privileges, or others to whom it has been committed by the prince.

Here it must be noted: "a) Bishops are prohibited by Clement IV and other Pontiffs from juridically interpreting privileges of regulars. Nevertheless, in a case in which the Apostolic See cannot be consulted, this was conceded by Alexander VI and Paul III to jurisconsults and other judges in favor of regulars. b) The same was conceded to Generals, visitors, and even provincials and immediate prelates, whenever they themselves consult the skilled. The same has place in the interpretation of rules, constitutions, and customs" (ibid.).

2. DOCTRINALLY, any learned man can interpret privileges; and it is lawful to acquiesce in his resolution, as all affirm (compare n. 171, 172).

The following RULES of interpretation are assigned:

⁸³Cf. the things which will be said n. 680. Note the words of the distinguished Lehmkuhl, I, n. 320: one can be obliged per accidens to the use of a privilege, if some virtue demands this.

1. Every privilege is to be interpreted in such a way that it is neither useless nor burdensome to the privileged person.
2. A privilege is to be interpreted broadly or strictly, according as it is favorable or odious. But a privilege is called odious which derogates from common right, or from particular statutes or customs which are not against common right, or which yields to the detriment of others; otherwise it is favorable. Therefore you will interpret strictly, for example, a privilege conceded to one illegitimate for receiving orders: namely restrict it to minor orders. But faculties conceded to religious you will extend broadly also to religious congregations and novices.

But an odious one is equated with a favorable one, and must be interpreted broadly, if either a) it is inserted in the Body of Law; or b) it is real, for on account of its perpetuity it is held as inserted in the Body of Law; or c) it is conceded with the clause: from certain knowledge, from proper motion; or d) it is a privilege of absolving, dispensing, or communicating it with others; or e) if otherwise it would be rendered useless.

“But privileges in prejudice of others, of which kind would be those for obtaining several benefices, or for conferring vacant benefices, or against regular observance, are to be interpreted strictly, even if they have been conceded from proper motion” (ibid., n. 7).

3. Privileges conceded to some Order, community, or for some pious cause are to be interpreted, according to the most common opinion, not only broadly, but most broadly, even if they are opposed to common right, or the right of some third party. The reason is, because they are presumed to have been conceded as remuneratory for services performed, and therefore are judged most favorable.
4. Where in a privilege there is had the clause: insofar as it is not opposed to the sacred canons, it is understood only concerning those canons in which there is expressed: not

notwithstanding any privilege whatever. But where there is had the clause: supplying each defect, it is understood only of defects of those things which are required by positive right, of accidental defects only, but not of defects from natural right, or substantial defects; as if the petitioner were excommunicated, or if the supplication were subreptitious or fraudulent, etc. (ibid., n. 8).

5. Privileges conceded to someone, not as to a particular person, but by reason of his office or dignity, or as to a member of that community, are understood to have been conceded to all others of the same office or community. Thus also privileges conceded to subjects, inferior prelates, a convent, etc., are judged to have been conferred upon superior prelates, other convents of the same Order, and even of others with whom communication is had, namely when the same or a similar reason operates (Salmant., tr. 18, c. 1, n. 108).

But privileges given for a determined time, or through particular Briefs and on account of a special cause, or in matters of difficult concession, are not communicated.

See more things in St. Alphonsus, or among the Salmanticenses.

§ 4. On the Cessation of Privilege

254. PRIVILEGE CEASES: 1. By the fact itself, either by the destruction of the whole thing or person to whom a real or personal privilege is attached; or by lapse of the time for which it is given; or by defect of the condition under which it is conceded; or finally when the number of cases to which it was limited has been exhausted.

2. Through renunciation, express or tacit, if the laws thus establish. If the privilege is singular, that is, if it contains a private favor of the person, this person can indeed renounce his own right; but so that the renunciation be valid, it ought to become known to him who conceded the privilege and to be accepted by him. If the privilege is common, as exemption of an Order for religious, the privilege of canon, forum, and competence for clerics, private persons can in no way renounce it.
3. Through non-use, or contrary use for a space of time sufficient for prescription, if the privilege is odious, and the occasion of using it has offered itself; because, in this case, tacit renunciation of it is judged to be present. Thus, he who has the privilege of not paying tithes, and nevertheless pays them knowingly and freely, loses the privilege. This holds for the external forum; for in conscience he does not lose the privilege who does not have the mind of renouncing. If the privilege is gracious, without burden for others, as the faculty of absolving, dispensing, not fasting, celebrating before dawn, etc., it is not lost through non-use, nor through contrary use, even of a very long time. The reason: because there is no one who has the right of moving a complaint concerning it, or of prescribing against him (cf. A. A. S., III, p. 450).

4. Through abuse; because he merits losing a privilege who abuses it. Yet for this there is required a sentence at least declaratory, unless the privilege has been given under some condition which the abuse itself takes away.
5. Through express or tacit revocation. Tacit revocation is made through a new law, although there is no revocatory clause, when otherwise the new law cannot obtain its effect; for a law ought not to be said to have been established as useless. Express revocation is made through clauses inserted into the law. As regards privileges revoked by Trent, see Card. Sanfelice, *Fundam. Juris can.*, P. II, p. 138.

Ordinarily the general clause suffices: notwithstanding privileges, unless these are specially firm, such as are: onerous privileges, or, on account of justice, remuneratory ones, for example, of religious, or ones conceded with clauses which require special mention for derogation, or ones inserted in the Body of Law. But if revocation is said to have been made from certain knowledge, from proper motion, from fullness of power, or if the mind of the legislator is certainly clear, then any privilege whatever is revoked; except onerous ones, namely those conceded on account of a price paid by the privileged person, or on account of a burden imposed on him. For these cannot be validly revoked unless a just cause is present and compensation is given. And Doctors commonly affirm the same concerning privileges remuneratory on account of justice (Salmant., tr. 18, c. 2, n. 26).

Note. Concerning the privileges of clerics, Bishops, and regulars in particular, it will be said in part IV, concerning particular precepts. Meanwhile see more things, if you wish, in St. Alphonsus, or among the Salmanticenses, or in Bouix, *de Jure Regularium*; Bargilliat, *Prael. Juris canonici*.

Chapter VI

On the Cessation of Law

St. Alphonsus, I, 199; ed. G., I, p. 176; Aertnys, I, I, n. 193. - As regards customs, see Reiffenstuel, Pirhing, Santi, Laurentius, Heiner, Aichner in the title *de Consuetudine*.

255. A law is said TO CEASE, when it ceases to oblige the whole community, so that a new promulgation would be needed if the legislator willed it to oblige anew. This can happen: both a) from within, or on the part of the law itself, namely through cessation of its final cause; and b) from without, either on the part of the legislator alone, through abrogation and derogation of the law, or also on the part of subjects, through desuetude or contrary custom, strengthened by some consent of the legislator.

Hence three things must be treated: 1. concerning the cessation of law from within; 2. concerning abrogation and derogation of law; 3. concerning custom, concerning which, on account of the connection of things, it remains to be discussed not only insofar as it is contrary to law, but also insofar as it induces or interprets law.

Article I

On the Cessation of Law from Within

Things to be noted beforehand. 1. The adequate end of law is that which is the total end of the law or precept. This end can be either unique, for example, if prayers are prescribed only for obtaining peace; or it can coalesce from several, as in the law of the prohibition of books: whose end is both that the damage of harmful reading be avoided, and that obedience be offered to the Church in such pernicious matters, and especially lest an occasion be given to depraved writers of disseminating novelties and harmful doctrines (H. Ap., II, 70).

2. The end of law can cease in a twofold way, either for the community or for such a subject: a) contrarily, namely when the law, circumstances having changed, is rendered harmful, unjust, or at least very difficult; b) privatively, when it becomes useless, for example, because the good which the legislator intended has either already been perfectly obtained, or can no longer be obtained thereafter.

256. PRINCIPLES. I. When the end of the law ceases contrariwise and in common, the law also ceases by the fact itself. The reason is clear from the things said concerning the nature of law: because as soon as law in common, that is, with respect to the whole or at least the greater part of the community, becomes harmful, inequitable, or morally impossible, it is no longer an ordinance of reason unto the common good, and therefore it is not law.

If the law becomes truly harmful or very difficult, not for the community but for a private person, place is given to epikeia. Yet the law does not cease in those circumstances, but only its obligation is suspended. Thus he who on a fast day has nothing except meats for eating is not held to abstinence. See the things said concerning the reading of a prohibited book

in an urgent case (n. 192). Cf. what St. Alph. teaches, VI, 613; ed. G., III, p. 639, where the discourse is concerning a pastor who discovers an impediment when all things are already prepared for the nuptials.

257. II. When the adequate end of the law ceases privatively, in common, the law likewise ceases by the fact itself. Thus, if someone vowed not to enter some house on account of danger of fornication, when this danger ceases, the vow also ceases. The reason, because since the law is useless, it loses the force of obliging. Thus St. Thomas and the Salmanticenses with the common opinion (I, 199).

We have said 1. When the adequate end ceases; for if only a partial end ceases, the law by no means ceases. For then the final cause remains in the remaining part, and therefore the law itself remains: it is understood, provided that the cause which remains is still sufficient. Thus, for example, an imposed prayer for obtaining peace and warding off plague does not cease if, peace having been obtained, the epidemic continues to rage.

But if in a particular case, for some brief time, the law becomes useless to the community, the same conclusion stands as in the preceding number (cf. also n. 173); the obligation is suspended.

2. In common, that is, with respect to the whole or at least the greater part of the community; because if the end of the law ceases only in a particular case and as regards a private person, the law itself does not therefore cease for the community.
3. The law ceases by the fact itself, that is, the declaration of the legislator or a contrary custom is not to be awaited, as all with the Salmanticenses (*de Leg.*, c. 4, n. 4), against a few, affirm, and indeed rightly; for where the essentials of law are lacking, the law collapses of itself. It suffices, therefore, that it be clear to me in particular, or probable, namely through reasons truly or readily probable, that the adequate end of the law has ceased in common. But it is otherwise if I doubt through slight or equiprobable reasons, as has been demonstrated several times.
4. III. When, in a particular case, the adequate end of the law ceases privatively, the law does not cease.

The reason: it conduces to the common good that all be bound by laws, even if they believe them to be useless for themselves. Add that in these things there will ordinarily be great danger of hallucination (St. Thom., 2.2, q. 154, a. 2).

This reason especially urges when the matter concerns laws founded on a presumption of right. Thus, for example, spouses are not exempted from the proclamation of banns, although they prudently judge that no impediment of matrimony exists (I, 199; VII, 237; *Istruz.*, II, 74; *Conf. dir.*, II, 23; 2 El. q. reform., n. 5).

Note. Nevertheless St. Alphonsus adds (I, 199): "If sometime a case occurred in which someone was altogether certain and secure that every danger of hallucination was absent; then I would not dare to disapprove the opinion of those saying that then, in the particular case, the law ceases."

Yet in circumstances of this kind a dispensation of the law is easily conceded (Suarez, l. 6, c. 18, n. 24).

Article II

On Abrogation and Derogation of Law

259. I. ABROGATION of law is the total abolition of that law which is perfectly obliging. This can be done either through the express revocation of a Superior, or through a later law which is repugnant to the former law.

It differs from invalidation or annulment, which is the abolition of a law not yet perfectly obliging, made by him whose part it is to have it ratified. Thus, for example, when the Pope does not approve Councils proposed for his approval, he invalidates them (Bened. XIV, *de Syn.*, l. 5, c. 4, n. 3).

II. DEROGATION is the partial abolition of a law perfectly obliging.

260. Concerning each cessation of laws of this kind, three rules are established:

261. Abrogation or derogation of ecclesiastical laws is ordinarily accustomed to be done through new laws incompatible with previous laws, without those previous laws being expressly revoked. But it must be diligently observed that previous laws are never judged to have been abrogated through later laws, unless they are altogether contrary to these later laws; for whenever contrariety can in some way be explained, correction of laws, insofar as it can be done, is to be avoided.

262. Through a general law the particular law of some place is never abrogated, unless it is expressly said: notwithstanding any particular law whatever, or: from our certain knowledge. The reason is, because the legislator is judged to be ignorant of particular laws, but not of common laws (I, 199; H. Ap., II, 71).
263. In order that a law be validly abrogated by the legislator or by his successor, no cause is required; since the whole force of the law depends on the will of the legislator. But so that it be licitly revoked, a just cause is necessary, regarding the common good.

Indeed, according to St. Thomas (1.2, q. 97, a. 2), laws are not to be changed for any improvement whatever, but for great utility or necessity. The reason is, "because custom avails very much for the observance of laws, so much so that those things which are done against common custom, even if they are in themselves lighter, seem graver: whence when law is changed, the constrictive force of law is diminished insofar as custom is taken away; and therefore human law ought never to be changed, unless from some part there is compensated to the common welfare as much as from this part is derogated."

Article III

On Custom

Note beforehand. Here the matter concerns only human law, which can be changed or taken away through custom. Against natural or divine law there cannot be given custom. Yet divine law, as regards the extension of the object, will be able to be more explained through custom: for example, as regards the accusation of external sins.

261. DEFINITION. Custom is either of fact or of right. Custom of fact, or material custom, is frequency of similar acts of some community. Custom of right, or formal custom, concerning which we here treat, is customarily defined: Unwritten right, induced by long-standing morals of the people, with some consent of the legislator.

DIVISION. Custom is either according to, beyond, or against law.

1. Custom according to law is that which is conformable to pre-existing law. Such custom confirms or interprets an established law by long use (cf. n. 170).
2. Custom beyond law is that which is neither prescribed by law nor opposed to law, such as would be, for example, the custom of hearing Mass outside feast days. Such custom can induce a new right where law is lacking.
3. Custom against law is that which is opposed to law, as there are, for example, in divine offices many ceremonies which the Roman decrees do not acknowledge (cf. n. 1638). Such custom introduces a right contrary to law, either by abrogating the law, or by derogating from it, whether as regards the obligation itself, or at least as regards the penalty established by the law. "Custom can also validate a contract invalidated by law, and introduce new impediments invalidating matrimony" (I, 107), and thus we have the impediment of disparity of cult.

With these things premised, it comes to be treated: 1. concerning the conditions of legitimate custom; 2. concerning the prohibition and abrogation of custom.

§ 1. On the Conditions of Legitimate Custom

262. The conditions, in order that custom constitute right, are required partly on the part of the community, partly on the part of the object, partly on the part of the prince.

I. ON THE PART OF THE COMMUNITY. Custom ought to be induced by a community capable of law, or at least by the greater part of it, through public, frequent, free, uninterrupted acts, placed with the intention of constituting right, for a long time.

It is said 1. By a community, not any whatever, but capable of law, that is, which is capable of legislative power for itself, or at least sufficient that true law can be imposed upon it (cf. n. 109, 4.).

2. Or at least by the greater part of it; because obligation is induced by the community, with the prince consenting; but it would not truly be induced by the community if only the lesser part observed the custom. But the greater part already morally represents the community.
3. Through public acts: so that all of the people, or the greater part, can come together in rendering consent, and such a custom can be known to the prince; and therefore the acts ought to be public, at least by notoriety of fact.

4. Through frequent acts; for two or three acts do not suffice, as some have less rightly supposed; but it is required that the acts be repeated several times, according to the judgment of prudent men, so that from them the consent of the community can reasonably be gathered (I, 107, 3.).
5. Through free acts, that is, not exercised from force, fear, or error; for the people cannot be presumed to will to establish right through acts which they themselves place either unwillingly or from mere error: nor is the Superior himself, in adjuncts of this kind, judged to consent (H. Ap., II, 79, 80).
6. Through uninterrupted acts, that is, confirmed by continued use; because if the people have placed one single act contrary to the custom, or the prince has punished the acts of the people, prescription against the law would have to be begun again.
7. Through acts placed with the intention of constituting right, that is, with the intention of imposing a law on themselves, if custom beyond right is introduced; or of exempting themselves from law, if custom against right is introduced. The reason is, because only then is the prince presumed to acquiesce in the community. But the mind of obliging oneself under grave matter is gathered from circumstances, namely if the custom is constantly observed, with not light inconvenience, if transgressors are punished, if thus pious men commonly think (cf. n. 1224, 1. and n. 2204, 3.). See St. Alph., III, 1009, dub. 3; IV, 142, where he treats of the obligation of reciting the office which custom has imposed on nuns and religious.

From this you will infer: 1. Custom beyond law is not induced if the people or the greater part of it acts from devotion, gratitude, or a similar motive, for example, by reciting the angelic salutation at the signal of the bell. 2. Nor does desuetude or custom against law prevail if the law is violated only inconsiderately and with the mind of not satisfying it;⁸⁴ for some intention of de-obliging oneself is required. Nevertheless, if a law is not observed for a long time in good faith, namely from ignorance of the law, it can prevail by way of prescription. Namely, it suffices that, with the opinion that the law does not exist, the people in good faith do not observe it (H. Ap., II, 80).

8. Placed for a long time, which nevertheless is diverse according as there is had the personal or legal consent of the prince (cf. n. 264). When personal consent stands on the part of the prince, a time so long-lasting is not required for legitimating custom; but when legal consent stands, a decade suffices, so that custom beyond law, or custom against a law not yet received by use, may be induced, indeed even so that any law whatever, whether civil or ecclesiastical, may be abrogated.

This last thing St. Alphonsus (I, 139) teaches as probable with grave authors, against others who require 40 years. Cf. the assertions of the Holy Doctor, III, 849; Benedict XIV, *de Synodo*, l. 13, c. 5, n. 4.

Note. On the part of the community, good faith is not required of itself,⁸⁵ so that this custom alone becomes legitimate which began without sin. "In the beginning, those introducing custom against law all sin. In progress, those using it when it has already been introduced by their elders do not sin, but they can be punished. But at the end, those using it when it has already prescribed neither sin nor can be punished." St. Alph., I, 107; ed. G., I, p. 89.

263. II. ON THE PART OF THE OBJECT. Custom ought to be good and reasonable.⁸⁶ The reason is, because it ought to be, like law, an ordinance of reason. Now indeed, custom must be held good and rational if its object is such that it could have been the matter of a just law. Whence it ought neither to be opposed to natural or divine right, that is, to be evil in itself, nor to be reprobated by canonical right as weakening discipline, nor to furnish license or occasion of sinning, nor to stand against common utility. Thus the custom of not accepting decrees of the Holy See, of not receiving its legates, etc., is of no strength (cf. Reiffenst. in l. I Decr., t. IV, n. 34).

Note. 1. It is not required that custom be positively reasonable, but it suffices that it be negatively consonant with reason, so that nothing impedes it from becoming reasonable in the course of time, or from its being reasonable not to urge its observance further, lest delicts be multiplied.

2. In doubt, and when the judgment of prudent men is lacking, it is to be presumed that a custom is reasonable from its possession, that is, from the fact that it has been introduced.
3. III. ON THE PART OF THE LEGISLATOR. For establishing custom, the consent of the legislator is required, whether personal or legal; because the power of establishing or abrogating laws belongs not to the people,

⁸⁴Otherwise it would be finished with the observation of Sunday, with fasting, and with the other laws of the Church. See what *Ami du Clerge* has on this matter in various responses, 1909-1912.

⁸⁵For legitimate prescription of goods, good faith is required from the beginning.

⁸⁶Cf. Giraldis, *Expos. Jur. Pontif.*, P. I, sect. 36; where a list of irrational customs can be read. See also *Nouv. Rev. Theol.*, vol. 4, p. 455; vol. 14, p. 20.

but to the legislator (I, 107). Now indeed:

4. Personal consent is that by which the prince through himself immediately approves the custom, either expressly, by giving license that it be induced; or tacitly, when, conscious that a custom is to be introduced, he does not resist it, although he could easily resist. In this case, custom is said to be introduced by way of connivance, and therefore, if by certain indications the tacit consent of the legislator is clear, a long-lasting time is not required.

But observe that custom is not confirmed by silence commanded by prudence, namely if the Pope or prince is silent on account of fear of a greater evil, for example, schism, rebellion. Whence that common saying: "The Church suffers many things which she does not approve" (cf. 164, 2.).

2. Legal consent, always-presumed, is had when the legislator, even if perhaps he is ignorant of the custom, consents to it through the general will expressed in right of approving any reasonable custom whatever as soon as it has been legitimately prescribed. In this case, custom obtains force by way of prescription. See the things said n. 262, 8.
3. IT IS ASKED. What must be done in doubt concerning custom?

Resp. 1. In invincible doubt whether custom beyond law exists or not, whether it has prescribed, whether there was present the mind of obliging oneself, etc., you are held to nothing; because custom of this kind is a new law, which, if it doubtfully exists, does not oblige. If you doubt whether it obliges under grave or under light matter, to fault or to penalty, the more benign part is to be held.

2. In doubt whether desuetude or custom against law exists already prescribed or not, you are held to the law; because this is in possession, and a certain law does not cease through an uncertain contrary cause. Nevertheless, the statement of an outstanding Doctor, even a modern one, asserting that the law has been abrogated, suffices so that we may be de-obliged from the law; for such authority, when it is not weakened by other Doctors, effects moral certitude (cf. n. 63, 3. and 4.). Read our Holy Doctor, I, 107; ed. G., I, p. 89; III, 290; ed. G., I, p. 560, where he proves the words of Mazzotta: in doubt concerning custom, the precept possesses, and dispensation is to be sought; otherwise, if it is probable that custom is present.

§ 2. On the Prohibition and Abrogation of Custom

Custom can be prohibited for the future, or abrogated in the present, as follows.

266. I. Custom can be PROHIBITED through a clause expressed in some law. And this in two ways:

1. Through a prohibiting clause, for example, through these words: "we do not will any custom against this law to have force." Through a clause of this kind, every custom to be introduced in the future is prohibited, which nevertheless is not therefore declared evil or irrational, and therefore, notwithstanding such prohibition, a future custom can prevail.

St. Alphonsus (I, 108; H. Ap., II, 81) follows this opinion as probable with Suarez (l. 7, c. 19, n. 21), Bonacina (disp. I, *de Leg.*, q. 1, punct. ult. § 3, n. 36), and others. The reason: such a custom can put on all the conditions numbered above. The prohibition annexed to the law indeed demonstrates that the custom to be begun here and now is judged to be irrational, and that the prince wills to consent only with difficulty. But circumstances can change, and the tacit consent of the prince, in most grave circumstances, is not excluded by the clause.

From these things you see what must be thought concerning the axiom: Against Trent there is no prescription. In reality, although Trent contradicts it, the usage of conferring parochial benefices without a concursus, or with it not carried out according to the clearly prescribed form, has prevailed almost everywhere. Cf. De Angelis, *Prael. Jur. can.*, l. I, tit. 4, n. 12. As regards customs against the Rubrics, see the things which will be said n. 1638.

2. Through a reprobating clause, as when the law says: "altogether disapproving that custom, since it is deservedly to be judged not so much custom as corruption." By this formula indeed custom is declared evil and irrational, but from this it does not follow that such a one can never prevail.

Thus St. Alphonsus solves the question (l. c.): "But if it is reprobated as contrary to natural or divine law, then no custom can have force. But if it is reprobated as irrational for the time in which the law is made, then, from a new cause, it can be rendered reasonable and have force" (cf. n. 263).

267. II. A prevailing custom can be ABROGATED through a supervening law. But here a distinction must be made:

268. If the custom is universal, by the fact itself it is abrogated through a subsequent contrary law, without a derogatory clause being necessary; for otherwise the new law would become useless.

269. But if it is particular, or local, it is by no means abrogated through a general law, unless mention is made of the custom, or unless the clause is added: notwithstanding any custom whatever; because the legislator must be judged to be ignorant of the custom.

And hence it is why Bishops, through the laws which they establish, abrogate all and singular particular customs, because they themselves are presumed to have knowledge of all customs which are in force in their dioceses (I, 109).

3. Finally, if the custom is immemorial, or at least if it numbers one hundred years, it is regularly not abolished except through special mention; for such custom is privileged, insofar as for it there is presumed a title than which no better can be alleged in the whole world, as Fagnanus says.

We have said regularly; for even an immemorial custom itself is abolished in certain cases, namely: 1. if a new law declares contrary customs irrational; 2. if the reason of the law operates equally against immemorial customs and against others; 3. if the legislator abrogates all contrary things, one case being excepted; for the exception of one is the exclusion of all the rest (cf. Craisson, *Man. Jur. can.*, n. 142; Bargilliat, *Prael. Jur. can.*, tr. I, c. 5, a. 4).

268. III. Custom can also BE TAKEN AWAY or ABROGATED through another contrary custom. But the new custom ought to be directly contrary to the preceding; namely universal, which takes away a universal; particular, which takes away a particular; and it ought likewise, by repeated acts, in the manner explained above (n. 262), to prescribe (Bouix, *de Princip.*, p. 381).

Note. If some custom is against faith and good morals, one must indeed labor that it be uprooted as soon as possible, since no legitimate prescription can be had in this matter. The same must be said concerning a custom which would be opposed to Christian piety. It belongs to the Superior to strive to take a custom of this kind out of the midst; because, from office, it is incumbent on him to care for the spiritual good of subjects.

But as regards the MODE which must be used in this matter, let obedience be given to the most wise admonition of St. Augustine (Ep. 22, to Bishop Aurelius, n. 5), who, treating of the license of feasts shamefully occupying almost the whole of Africa everywhere, under the empty pretext of honoring the feasts of martyrs, urged the best manner of acting, writing gravely: "Not harshly, as much as I judge, not severely, not in an imperious manner, are those things taken away; more by teaching than by commanding, more by admonishing than by threatening. For thus one must act with a multitude; but severity is to be exercised upon the sins of the few. And if we threaten anything, let it be done with sorrow, by threatening from the Scriptures future vengeance, lest not we ourselves in our power, but God in our speech, be feared."

Cf. the things which *Ami du Cl.* wisely advises, 1906, p. 42, 361; 1907, p. 249, in relation to customs which are in force among unbelievers; likewise the things which it writes concerning customs of the faithful and the silence of competent authority (1900, p. 1027 ff.).

Treatise III

On Human Acts

Proemium

On the Notion of a Human Act

As we have already said, the reason for discussing human acts is this: the primary moral office of man as wayfarer does not consist in this, that he know only the rule of acting, whether proximate or remote, but that he tend to the supernatural end by his own acts, applying his will, with grace assisting, to those things which the supreme Legislator has imposed upon him. "The divine precepts themselves would not profit," says St. Augustine (*de Grat. et lib. Arb.*, c. 2, n. 4), "unless man had free choice, by which, doing them, he would come to the promised rewards."

269. DEFINITION. A human act is an act proceeding deliberately from the will of man (V, n. I, II).

Namely, those acts are called human which proceed from man insofar as he is man, and differs from irrational creatures, not only as to substance, but also as to the mode of operating. But man differs, as to the mode of operating, from irrational creatures in this, that he operates freely, or from deliberate will, and thus is master of his acts, so that he places them or does not place them at his pleasure. But we call that will deliberate which, with previous advertence of reason concerning the thing to be done or omitted, chooses one or the other from opposites. Only acts proceeding from such a will are properly called human (St. Thom., 1.2, q. 1, a. 1).

To human acts are opposed ACTS OF MAN, in which either the light of reason does not shine beforehand, or the consent of the will does not accede. These acts can indeed be called acts of man, because they proceed from man, but they are not to be called human acts, because they are not done in a mode proper to man. Of this kind are either first-first motions, so called because they anticipate the judgment of reason; or acts of a man in no way attentive, dreaming, delirious, insane, drunk, or lacking the use of reason in any way whatever (St. Thom., *ibid.*).

DIVISION. A human act can be divided in many ways:

1. By reason of principle and term, it is either elicited or commanded. An act is called elicited which is perfected and consummated in the will itself, without the aid of another faculty, as are purely internal volitions and nolitions; commanded, which, with the will commanding, is perfected by another power subject to the will; whether internally, as the act of thinking about some particular thing; or externally, as the act of walking, writing, etc.
2. By reason of subjection in the soul, it is either internal or external. Internal is that which is perfected only by the internal powers of the soul, such as the act of thinking, loving; external, which the will perfects through the organs of the body, for example, walking, speech, etc.
3. By reason of proper ordination, it is either good, or evil, or indifferent. Good, or licit, is said of that which is conformable to right reason; evil, or illicit, that which disagrees from right reason; indifferent is that which, considered objectively, does not have relation to goodness or malice, for example, to walk, to speak, etc. Good again is either natural, which is perfected by the powers of nature alone; or supernatural, which can be elicited only by the aid of divine grace, as an act of faith, hope, charity. A supernatural act is either meritorious *de condigno*, to which reward is owed from justice, or meritorious *de congruo*, which merits only from fittingness (V, n. III, IV).
4. STATE OF THE QUESTION. Human acts can be considered either psychologically, under which respect philosophy subtly disputes various things concerning them; or morally, under which respect Moral Theology weighs them, investigating namely when and how they are TO BE IMPUTED to man, whether unto good or unto evil.

Therefore under the latter respect we shall dispute concerning them, inquiring when and in what measure they are imputable to the one operating in general, as to their proper author; then, when they are imputable unto good or unto evil, or what their morality is, and from where it is had.

Hence: 1. concerning the imputability of human acts; 2. concerning their morality. In other words: 1. concerning human acts in their respects to the principle; 2. concerning human acts in their relations to the moral order.

Chapter I

On the Imputability of Human Acts

St. Thomas, 1.2, q. 6-21; St. Alphonsus, V, 1-5; ed. G., II, p. 685 ff.; Suarez, in 1.2, tr. 2; Billuart, *de act. hum.* Diss. 4; Frins, *de act. hum.* I and II; Bouquillon, *Theol. mor. fund.*, ed. 3, n. 318 ff.

IMPUTATION is a judgment by which an act is attributed to someone as to its true author and master; so that the agent is held to render an account concerning the act itself and its natural effect, for example, concerning damage inflicted on someone. Imputability is the very quality of the action, by force of which such a judgment is made (Muller, *Theol. mor.*, I, § 90).

Imputability is founded on the dominion which belongs to man over his own acts: therefore those acts are imputable which it is within the power of man to place or not place; and hence all and only human acts must be called imputable, both those which each one places personally and those in whose placing he actively cooperates, as we shall say below (n. 517). Moreover, dominion over human acts is had from this, that they proceed from free will; wherefore, as principles of imputability, THE VOLUNTARY and THE FREE are rightly assigned. Each of these can be more or less perfect, and can be lessened or even taken away by various impediments: in which case, imputability is lessened in the same degree, or even taken away.

Therefore we must discuss: 1. concerning the principles of imputability; 2. concerning the impediments of the same.

Article I

On the Principles of Imputability

§ 1. On the Voluntary

271. DEFINITION. The voluntary can be defined thus: an act proceeding from an intrinsic principle, or from the will, with knowledge of the end (V, n. VII).

An act of the will necessarily presupposes knowledge of the end in the agent; for nothing can be an object of the will unless it was first apprehended by help of the intellect; and the more perfect or nobler the knowledge of the intellect has been, the more perfect the will will be. Hence the axioms: Nothing willed, unless foreknown; Nothing in the will, unless it was first in the intellect. But end here is taken in a broad sense, for the term of the will in the concrete, namely for the object with all its circumstances. Therefore, to constitute the notion of the voluntary, two things are required: 1. some knowledge of the end, on the part of the intellect; 2. consent, on the part of the will (St. Thom., 1.2, q. 6, a. 1).

From this definition it is clear that the voluntary differs from the spontaneous, from the willed, and from the free.

1. The SPONTANEOUS, in the broad sense, says absence of any external influence whatever, and is: that which happens with no precept, fear, deceit, etc., compelling. In the strict sense, it says only absence of coercion, and is that which proceeds from an intrinsic principle; whether with full and formal knowledge of the end, as every voluntary act; or with imperfect and material knowledge, as, for example, an indeliberate motion by which someone strives to repel pain, and thus it differs from the voluntary. From this it is clear that the spontaneous extends more broadly than the voluntary; for every voluntary is spontaneous, but not vice versa (Porpora, tr. II, n. 9).
2. The WILLED is said of the object toward which the will tends, yet without necessarily proceeding from the influence of the will itself. The willed is compared to the will as object to faculty; the voluntary as effect to its cause. Thus, for example, rain poured out upon dry earth, as regards the farmer, will be called willed, but not voluntary (Konings, *Theol. mor.*, n. 4).
3. The free consists in this, that the will proceeds to acting with no necessity compelling. The merely voluntary abstracts from whether the act is placed with indifference or with determination to one. The free is a species of the voluntary.
4. DIVISION. The voluntary is divided in many ways by theologians:
5. By reason of the mode by which it proceeds, it is free or necessary. Free is that which is done by a will which operates with indifference toward willing and not willing; such is the love of man as wayfarer toward God. Necessary is that which proceeds from a will determined to one, as is the love of the Blessed in the homeland. "The notion of the voluntary is found more perfectly in necessary human acts than in free ones. The reason is, because the greater the love is, the greater is the voluntary, that is, the greater is the inclination of the will and the greater the knowledge of the intellect. Such is the necessary love of God toward Himself, or the love of the Blessed, by which they are borne with their whole effort into God" (V, n. IX).

In the schools, THE VOLUNTARY is regularly taken for the free voluntary, since all acts by which man as wayfarer tends to his end proceed in reality from free will.

2. By reason of perfection, it is perfect or imperfect. Perfect voluntary is said of that which is done from full knowledge of the thing and from full consent of the will, as if someone, perfectly knowing and willing, eats meat on a forbidden day. Imperfect voluntary, which is also called semi-voluntary, is that which is done with imperfect knowledge or advertence; as happens in those half-asleep, or distracted to other things (St. Thom., 1.2, q. 6, a. 6).

From the fact that someone performs such a work only with difficulty, do not conclude by the fact itself that imperfect voluntary is present, as is clear from the example of apostates whom the Church has always condemned. The whole reason of perfect or imperfect voluntary must be taken from the degree of advertence (Lehmkuhl, I, n. 85).

3. By reason of the whole complex, it is voluntary simply, or in a certain respect. Voluntary simply is said of that which, all things having been weighed, proceeds from the will, although the object, under some respect, is displeasing.

Voluntary in a certain respect is said of that to which, when only certain circumstances are attended to, the will bears itself, but which finally, all things considered, it repudiates. It is called, as is clear, voluntary improperly; for it is nothing other than a simple velleity. The known example of this thing is that of the merchant throwing goods into the sea from fear of shipwreck: their throwing is voluntary simply; but preservation is voluntary in a certain respect.

Others explain the matter otherwise: Voluntary simply, or pure, is said of that which proceeds from the full inclination of the will toward the object, without any repugnance; voluntary in a certain respect, or mixed, that which indeed proceeds from the consent of the will, but with repugnance (cf. V, n. IX and XIII).

4. By reason of correlative knowledge, it is explicit or implicit.

Explicit is said of that which happens from formal and distinct knowledge of the thing willed; for example, if the minister of the Church says: I will to confect this sacrament.

Implicit is said of that which happens from more general and confused knowledge; for example, if one about to confect a sacrament says: I will to perform this rite which the Church holds as sacred (VI, 22).

5. By reason of manifestation, it is express or tacit. Express is that which is manifested externally, by words or signs: for example, if a Bishop, asked that he concede jurisdiction for hearing confessions, responds: I concede, or nods by an inclination of the head. Tacit is that which is not declared externally, but is sufficiently and prudently gathered from some fact, or omission of a fact, when the circumstances have been considered. Thus a Bishop grants jurisdiction by fact, if he asks someone to receive confessions. Thus likewise the sins of subjects are voluntary and imputable to a Superior if he omits to oppose himself to them, when otherwise he can and ought to do this.

Hence the rule of right: "He who is silent seems to consent" (Reg. 43 in 6.). This rule holds in two cases, namely: a) when something favorable is proposed to one silent; b) when he who is silent is held to speak and can. Otherwise another rule holds: "He who is silent does not confess, but neither indeed does he seem to deny" (Reg. 44, *ibid.*).

6. By reason of its very actuation, it is actual, virtual, habitual, and interpretative. a) Actual voluntary is that which here and now is elicited or commanded by the will with continuous attention of the mind. But this can happen either by an act signified, when by clear words or another sign the voluntary is, as it were, signed, for example, if the agent says: I will to do this; or by an act exercised, when without such a sign it is exhibited from the work itself; thus one genuflecting attentively performs an act of adoration. b) Virtual voluntary is that which is done by force or virtue of an act of the will not yet revoked, and continuing to influence morally. It was placed at the beginning of the work, but afterwards is absent. c) Habitual voluntary is that which indeed once was willed by actual volition for the future, and afterwards was never revoked, but now flows into the act neither directly nor indirectly, because the attention of the mind is altogether lacking. The habitual acts more by force of habit than by force of will. d) Interpretative voluntary, like the habitual, excludes a motion of the will here and now toward the end, but superadds the absence of a tendency toward the object even in the past. For it is that voluntary which indeed was never expressly willed, but would have been willed or is presumed it would be willed, if it were thought of, or could be thought of.⁸⁷

You have an EXAMPLE of actual voluntary in him who here and now, by mind alone, or by mind and mouth, says: I will to consecrate; of virtual in the same, if by force of this will he begins Mass and pronounces the words of consecration, but distracted in mind; of habitual in him who yesterday willed that the fruit of the Mass which he is about to celebrate today benefit Titius deceased, but today celebrates unmindful of yesterday's will; of interpretative, in the consent of a dying man, destitute of senses, who is judged to seek the sacraments.

Two things must be noted here: 1. In succession, implicit virtual, which proceeds from an implicit act, is confused by authors with interpretative. Therefore from the context one must judge in which sense it must be understood, whether truly for virtual implicit, or for strict interpretative. 2. Interpretative voluntary differs from tacit in that in the former no consent is present, but in the latter true consent is present. Yet each is accustomed to be called presumed voluntary; tacit is presumed concerning the present; interpretative is presumed conditionally, or concerning the future.

7. By reason of intention, it is direct or indirect. Direct voluntary is said of that which is willed in itself and immediately, as when someone steals something because he has the will of stealing; indirect, that which is willed not in itself, but in another, with which it is known, at least confusedly, to be connected; whether as an effect proceeding from some cause, for example, drunkenness from excessive drink; or as something connected with the cause, for example, sacrilege in the theft of a consecrated chalice (cf. n. 274). Now indeed:

An act of the will can have either a single or a multiple EFFECT. If the effect is single, it must be called directly voluntary, because the act was ordered to it. If it is multiple, sometimes any of them is directly voluntary, namely if the will tends directly toward each one, and seeks them in themselves; sometimes one is directly voluntary, the others only indirectly. Moreover, the directly voluntary is intended in itself, and has the nature of moving the will. The indirectly voluntary

⁸⁷Cf. in what way the Tribunal of the Sacred Rota explains this doctrine, A. A. S., II, p. 968. Read the explanations of Lugo, *de Sacr. in gen.*, disp. 8, sect. 5; *de Poenit.*, disp. 7, n. 40.

is not intended in itself, nor does it move the will, which reaches it only by reason of its connection with the directly voluntary act. Nevertheless it is a true object of the will, although indirect; for the will wills such an action as cause. But he who wills the cause also wills the effect which will follow from it, if he foresees this effect. Hence the saying: He who is the cause of the cause is the cause of the caused.

Note. To the INDIRECT voluntary is referred that most intricate question: When is an evil effect, not intended in itself indeed, but proceeding from a voluntary cause, imputable unto fault to the one placing the cause? But this matter will be treated more fittingly in the article on the extension of morality (cf. n. 314 and 315). For the things which we are about to say concerning the sources of morality will contribute very much to the solution of this question. See n. 296 ff.

273. To the voluntary is opposed THE INVOLUNTARY, which happens either from an extrinsic principle against the propensity of the will, as happens to one acting from force or fear; or without knowledge of the intellect, which either is taken away or at least bound, as happens to one operating from ignorance or passion (V, n. XII).

Just as the voluntary, so also the involuntary is MULTIPLE. One is called involuntary privatively, or non-voluntary, when there is only lacking in someone the act of willing that which he could will. Another is called involuntary positively, or contrarily, when namely something not only is not willed, but also is positively not-willed and repugnant to the will.

Again, positive involuntary is TWOFOLD: one simply, which, when all the adjuncts are considered at once, so displeases the will that in no way, and for no reason, does it will it; another in a certain respect, which, although under some respect it displeases the will, nevertheless under another reason is more pleasing to it and is accepted (V, n. XIII).

Hence arises the mixed from voluntary and involuntary. For something is voluntary simply and involuntary in a certain respect, when someone definitively consents, although with some repugnance; and conversely, it is involuntary simply and voluntary in a certain respect, when someone denies consent, although the thing in some way pleases him. You have an example of the first in him who, from fear of shipwreck, throws goods into the sea; an example of the second in him who refuses great gain because he knows it to be unjust.

274. From these things you will gather: 1. In order that some action be called wholly voluntary, it is necessary that it be known according to all its parts and circumstances; if some one of these is unknown, the action is not called voluntary as regards that unknown circumstance. Thus he who approaches a woman whom he does not know to be married does not commit the sin of adultery, but of simple fornication, since he has himself involuntarily as regards the circumstance of matrimony which he does not know (V, n. VIII).
275. Where there is no advertence, there is no voluntary, and therefore no sin, as happens in the actions of those sleeping, which are simply involuntary. But where there is half-full advertence, there is the semi-voluntary, and only venial sin, as happens in those half-sleeping (cf. n. 336).

§ 2. On the Free

275. Things to be noted beforehand. Liberty, in general, is immunity from servitude and subjection: whence, as many as are the species of servitude, so many are the species of liberty.

But a fivefold liberty is customarily assigned: 1. LIBERTY OF SPONTANEITY, which consists in exemption from violence and from coercion. This is common to all living things; indeed by analogy it is transferred to inanimate things: thus water is said to flow spontaneously.

2. LIBERTY OF INDIFFERENCE, or of choice, which consists in exemption from necessity and natural inclination determining to one. This belongs to intellectual nature alone.
3. LIBERTY OF INDEPENDENCE, which consists in exemption from obligation to law and any Superior commanding. This absolutely belongs to God alone, who, subject to no one, alone is law and rule to Himself; but participatively and relatively, also to intellectual creatures, namely outside the ambit of those obligations by which each is bound, and then it is called moral liberty, or the power of acting licitly (cf. n. 279). See St. Alph., *Diss. dell'Uso moder.* (1765), c. 4, n. 11-16.
4. LIBERTY OF GRACE and Virtue, which consists in immunity from sin, and from habits inclining to evil. This belongs only to the good, in whom, the motions of cupidity having been extinguished or mitigated, and the yoke of sin having been shaken off, there is the tranquil kingdom and rule of will and reason, subject to God alone. The just man has all his affections right; whence, even if no law had been imposed upon him, as if connaturally and from his own inclination, he would observe those things which are of the law; concerning which the Apostle, speaking, said (1 Tim. 1:9): Law is not placed for the just, but for the unjust.

5. LIBERTY OF HAPPINESS, which consists in exemption from all misery and penalty. This belongs to those who have already entered into the joy of the Lord.

Only liberty of indifference, or of choice, refers to our matter; for this alone is the principle of imputability, and constitutes man master of his acts. As regards the other species of liberty, it suffices to note these things: Concerning liberty of spontaneity no peculiar treatment occurs, since it is included in liberty of choice, of which it is the foundation. Liberty of independence is circumscribed by laws, which determine the right use of choice. But the observance of laws leads to liberty of grace and virtue, which brings forth the liberty of glory (Billuart, Diss. 2).

276. DEFINITION. Liberty of choice is elective force, or the faculty by which the will is endowed, of choosing or not choosing, at pleasure. We call that act free which is done with no necessity compelling, or which can be omitted at pleasure.

DIVISION. "LIBERTY OF CHOICE, or liberty from necessity, is subdivided: into liberty of contradiction, by which someone can act or not act; into liberty of contrariety, by which he can act thus or act the opposite, for example, to love or to have hatred; and into liberty of disparity, by which he can do this or another thing, but not the opposite, for example, to write or to walk" (V, n. XXX).

To liberty is opposed NECESSITY, and it is the state of a thing which cannot have itself otherwise. One is called necessity of coercion, which is the same as violence; it arises from an extrinsic principle, and if it is absolute, it takes away the free and the voluntary, as will be said below (n. 282). Another is necessity of nature, or of natural inclination, which consists in a certain propensity implanted in the will by nature itself, toward something necessarily pursued or avoided. It is from an intrinsic principle determining to one, and takes away the free, but not the voluntary. Thus the Blessed necessarily love God, and man as wayfarer necessarily seeks good in general.

The things which regard the question of free choice are customarily treated at length in Dogmatic Institutions; wherefore we shall recall only the following principles. Cf. St. Alph., *Op. dogm.* (ed. Walt.), II, p. 220, 411, 463, 495.

277. PRINCIPLES. I. Man, even after the fall of Adam, enjoys free choice. It is of faith, from Trent, Sess. 6, can. 5: "If anyone shall have said that man's free choice, after Adam's sin, was lost and extinguished, or that it is a thing of title alone...: let him be anathema." See V, n. XXXII ff.
278. II. For meriting or demeriting, in the state of fallen nature, liberty from coercion does not suffice, but liberty from necessity, or of indifference, is required. It is similarly of faith, from the third proposition of Jansenius condemned as heretical: "For meriting or demeriting, in the state of fallen nature, there is not required in man liberty from necessity, but liberty from coercion suffices."
279. III. The power of sinning, which is in man as wayfarer, is not of the notion of liberty, but rather of its imperfection. And indeed truly, "if to be able to sin," says St. Anselm (*de lib. Arb.*, c. 1), "were part of free choice, God and the Angels would not have free choice: which is absurd." The reason is evident: for since free choice is a quality of the will, it is ordered of itself to the good; but to be able to deflect from its own proper object is the defect or vice of any power whatever: therefore the faculty of sinning is a defect of liberty. Whence St. Thomas (*de Verit.*, q. 22, a. 6): "To will evil is neither liberty nor part of liberty, although it is a certain sign of liberty, just as sickness, for example, is a sign of life." And St. Augustine (*de Civ. Dei*, l. 22, c. ult., n. 3): "Choice will be the more powerful, the more it will not be able to sin."

It is helpful here to add the things which St. Alphonsus (H. Ap., III, 11) writes concerning the root of liberty, briefly and learnedly in this way: "It must be noted that the root of liberty of indifference arises from the indifference of judgment, which is nothing other than deliberation concerning the good or evil which is considered in the action. This indifference of judgment does not now constitute liberty, but, as was said, is the root of liberty, so that afterwards the will can choose freely and indifferently what shall have pleased it."

280. From the things said you will gather: 1. Man's proclivity to evil never becomes a necessity of sinning; wherefore judges sin gravely against natural and civil right who absolve those guilty of great crimes, under the imaginary pretext that, in acting, they lacked liberty. See, however, the things to be said n. 291 and 292, note.
281. They speak absurdly who, under the pretext of liberty, maintain license of opining, writing, teaching, and operating all things at pleasure. These confuse the physical liberty of choice with moral liberty or independence. The former is natural to man; the latter by no means, unless, as was said, it is contained within the limits of the good and the licit (n. 275, 3.). See the work *Verita della fede*, P. II, c. 11; *Confut. del libro dello spirito*, n. 24.

To the point Pope Leo XIII (*Encycl. Immortale Dei*): “Nor can the Church approve that liberty,” he says, “which begets disgust for the most holy laws of God and strips off due obedience to legitimate power. For it is more truly license than liberty; and most rightly by Augustine it is called liberty of perdition, by Peter the Apostle a veil of malice (1 Pet. 2:16): indeed, since it is beyond reason, it is true servitude: for he who commits sin is the slave of sin (John 8:34). On the contrary, that is genuine and desirable liberty which, if it is considered privately, does not allow man to serve errors and passions, most hideous masters; if publicly, it wisely presides over citizens, supplies widely the faculty of increasing advantages, and defends the republic from another’s arbitrary power.” A. S. S., vol. 18, p. 175.

Note. Certain things should be said here concerning the principles which concur for the production of a free act: namely concerning advertence and the consent of the will. But concerning these things below, n. 317, when the discourse will be concerning sins.

Article II

On the Impediments of Imputability

Everything impedes the imputability of human acts which is opposed to the principles of imputability itself, that is, to the voluntary and the free. But there is no reason why we should treat separately of the impediments of THE FREE; and the reason is, because, if we except internal necessity, which is opposed only to the free, the impediments of the voluntary and of the free are altogether the same. But the treatment of internal necessity is rightly and deservedly omitted, for the reason that man as wayfarer never experiences it in his peculiar acts. Therefore the discourse will be concerning only the impediments of THE VOLUNTARY, of which four are counted, opposed to the two constitutives of the voluntary, namely: violence and fear, which are opposed to the intrinsic principle, or the will; ignorance and concupiscence, which are opposed to knowledge (cf. n. 271).

These impediments proximately influence the internal act. But there are given also others which exercise a remote influence upon liberty and are: heredity, temperament, and certain pathological states.

Yet let it be noted that these impediments, which are called remote, obtain efficacy only through the mediation of the proximate ones, as Bessmer, S.J. rightly notes (*Stimmen aus Maria-Laach*, 1908, II, p. 258), and therefore can, indeed ought, rightly to be reduced to the four heads noted above, already introduced by Aristotle.

I. On the impediments which proximately influence the voluntary.

§ 1. On Violence

Cf. St. Thomas, 1.2, q. 6, a. 4-5; St. Alphonsus, V, n. XV; ed. G., II, p. 692; Salmant., *de Vol.*, disp. V; Frins, *de act. hum.*, n. 247-280.

281. DEFINITION. Violence is a motion proceeding from an extrinsic principle, while he who suffers the force resists (V, n. XV).

Violence cannot be inflicted on the will with respect to elicited acts; but it is inflicted with respect to commanded acts. God indeed, and He alone, can change the will; but He cannot coerce it. But extrinsic force can be inflicted not only on the body, but also on the inferior faculties of the soul. Cf. n. 559.

In order that force, coercion, be present, it is not necessarily required that the influence be caused by one compelling from without. The notion of violence first of all demands that something be done in us while the will resists; and therefore first-first acts, by analogy, are reduced to the impediment of violence. Any cause whatever, whether it is in man or is found from outside, can violently influence the acts of man.

DIVISION. Violence is either absolute, when he to whom it is inflicted resists in every way in which he can; or in a certain respect, when he does not resist according to his powers.

282. PRINCIPLES. I. Absolute violence takes away the voluntary. The reason is, because when the will of the one suffering resists the extrinsic agent according to its powers, the action of the agent is in no way willed by the one suffering; for it is against

every inclination of the will, and therefore simply involuntary; whence, those things which are done by force merit nothing of good or evil. Hence it is deduced that a woman who in every way resists the violence which is inflicted upon her against chastity does not sin, even if she suffers rape unwillingly (V, n. XVII; compare St. Thom., 1.2, q. 6, a. 5, ad 2).

283. II. Violence in a certain respect does not take away, but lessens the voluntary.⁸⁸ The reason is, because where the will does not resist as much as it can, there remains in part the notion of the voluntary; hence, according to the greater or lesser resistance of the will, the action will be more or less imputable. Whence girls are by no means excused from sin who, when lustful youths act more freely with them, do not oppose resistance in every way (V, n. XVIII).

284. IT IS ASKED. What resistance must be applied so that an act proceeding from violence not be imputable?

Resp. Since resistance is the reluctance of the will so that an act may not be imputable, it is clear, as regards commanded acts, that all that resistance must be applied which seems useful for impeding the act or its effects. "But to the impossible, or to the useless, no one is held." Thus martyrs, conducted by force to the temples of idols, did not sin, although they themselves walked. Nevertheless sometimes, or per accidens, even ineffective resistance must be applied for the sake of protestation; namely where tacit protestation, or protestation expressed by words alone, would not suffice for averting injury to religion, or for removing the danger of scandal. Similarly, a peculiar obligation of resisting urges in more dangerous matter, for example, when it is opposed to chastity; because defect of resistance induces danger of consent (cf. n. 374, 778). But if resistance is not only useless, but also consent will certainly not be present, then of yourself you are not held to resist, unless further attempts are feared.

§ 2. On Fear

St. Thomas, 1.2, q. 6, a. 6; St. Alphonsus, V, n. XX; ed. G., II, p. 693; VI, n. 1047 ff.; ed. G., IV, p. 193; Bain, *Les emotions et la volonte*, p. 147.

285. DEFINITION. Fear is trepidation of mind, on account of an evil present or future: namely an evil present either to the very person who fears, or to another who is closely joined to him by blood-relationship, affinity, marriage, or singular friendship (V, n. XX).

Fear can be present on account of an evil apprehended in the mind alone as present and imminent.

DIVISION. Fear is divided in many ways:

1. By reason of influence upon the act, it is antecedent or concomitant. Antecedent is that which moves one to acting, so that the action is said to proceed FROM fear. Concomitant is that which only accompanies the action, without influencing it in any way, so that the action is said to be done WITH fear.

Thus a traveler who gives a purse to a robber acts from antecedent fear; but the robber acts with concomitant fear, lest he be discovered.

2. By reason of object, fear is light or grave. Light fear, which is also called vain, is that by which a light evil is feared, or even a grave one, but from a light and improbable cause. Grave fear is said to be present if a grave evil is feared from a very probable cause.

But fear: a) is grave absolutely if an evil grave in itself is feared from a grave and truly probable cause, and cannot be escaped: this fear is said to fall upon a constant man, as being that by which even a firm man is deservedly struck. Commonly grave evils are judged to be death, mutilation, a foul wound, loss of liberty, status, reputation, chastity. b) It is grave respectively if the evil which is feared is indeed in itself and commonly light, yet grave with respect to the one fearing, because he is fearful, such as children, women, old men are (V, n. XX; VI, 1047; H. Ap., III, 16).

Reverential fear must be added, by which a son fears the offense of parents, a ward of a guardian, a wife of a husband, a subject of a Superior. But it can be grave if the fear is lest he who strikes fear be held offended for a long time or gravely (III, 717; VI, 1056; H. Ap., I, c.).

3. By reason of cause, fear is from within or from without. That is said to be from within which comes from an internal cause, such as disease, weakness of mind, etc.; or also, in a broader sense, that which comes from any natural cause whatever, for example, from shipwreck, fire, an attack of wild beasts, etc.; but that is said to be from without which comes from an external and free cause, or from man (VI, 1049).
4. By reason of the mode by which it is struck, fear is just or unjust, according as it is struck from a just cause, for example, of merited penalties, or from an unjust one, that is, through injury.

⁸⁸The words lessens the voluntary signify that grave or light sin is present, or in the same genus a sin less imputable, according as these impediments influence more or less the advertence of the intellect or the free exercise of the will. Cf. n. 289.

5. PRINCIPLES. I. Grave fear regularly does not take away, but lessens the voluntary. The reason for the first is, because through fear neither knowledge on the part of the intellect nor choice on the part of the will is taken away, which always enjoys the faculty of determining itself to the opposite. Hence those who denied the faith from fear of torments have always been held as apostates. The reason for the second is, because since fear has joined to it repugnance of the will, the action becomes involuntary in a certain respect: whence the voluntary is lessened, as is clear (V, n. XXI).

We have said regularly; for sometimes fear altogether takes away the voluntary, namely if it is so great that it takes away the use of reason; but this is per accidens, and fear, in such a case, takes on rather the nature of passion, concerning which it will be said n. 290.

II. Light fear neither takes away nor lessens the voluntary. Hence that saying of right: "Vain fear is not a just excuse."

Note. Fear sometimes excuses from law, or at least from penalty, as we saw in the treatise on Laws (n. 223); sometimes it stands against the value of an act, as we shall see below when we dispute concerning vows, oaths, contracts, and matrimony. For from the fact that fear does not take away the voluntary, it does not follow that all things are firm and valid which are done under the influence of fear (V, n. XXII).

§ 3. On Ignorance

St. Thomas, 1.2, q. 76; St. Alphonsus, V, n. XXVI; ed. G., II, p. 695; *Ami du Clerge*, 1898, p. 1153; Huber, *Hemnisse der Willensfreiheit*; *Stimmen aus Maria-Laach*, 1909, p. 253.

287. DEFINITION. Ignorance, in general, is lack of knowledge in a capable subject. One ignorance, which is called negative or nescience, is lack of knowledge otherwise not owed, for example, in a rustic who does not know canon law. Another, which is called privative, is lack of owed knowledge, for example, in a confessor who does not know the things which pertain to the administration of the sacrament of penance. Another, which is called positive, or of depraved disposition, or also of contrariety, or error, is assent given to the false as to the true, or dissent from the true as from the false, for example, in a heretic (H. Ap., III, 13).

To ignorance are referred both FORGETFULNESS, which is privation of remembrance of a thing formerly known; and INADVERTENCE, which is lack of actual knowledge and defect of consideration in acting. This, if it comes from a depraved habit or from passion, is called ignorance of evil choice.

Here we consider ignorance insofar as it is lack of owed knowledge, whether it has error annexed to it or not; whether it is habitual or merely actual, as inadvertence.

DIVISION. Multiple ignorance is distinguished (V, l. c.):

1. By reason of object, it is of right or of fact. Ignorance of right is had if someone does not know the law, or is ignorant that something has been prescribed or prohibited: for example, if he is ignorant that fasting must be observed on Ember Wednesdays. Ignorance of fact is had if someone is ignorant of the existence of a fact, or of its circumstances: for example, if he is ignorant that today is an Ember Wednesday (cf. n. 40, 4.).
2. By reason of the action which is done ignorantly, ignorance is causing the act or merely accompanying. It is called causing the act when in some way it influences the work, and is the reason why the act is placed, either simply, or clothed with such a circumstance. It is had in him who can say: if I had known, I would not have done it, or I would not have acted in such a mode: for example, a hunter killing a friend whom he believes to be a wild beast would by no means have killed him if he had known that he was a friend. Moreover, ignorance causes the act not of itself, because, since it is privation and not a being, it cannot of itself influence; but per accidens, namely insofar as it removes knowledge, which, if it were present, would impede the work.

Ignorance merely accompanying is said of that which in no way influences the act; because, if knowledge were present, the work would be placed equally, indeed perhaps more easily and promptly, for example, if someone, thinking he is killing a stag, kills his enemy, whom nevertheless he would have killed even if he had known him (H. Ap., XIX, n. 8).

3. By reason of subject, ignorance CAUSING THE ACT is invincible or vincible. Invincible is that which cannot be overcome, either because doubt concerning the opposite does not occur, in which case it is physically invincible; or because, when moral diligence has been done, it cannot be put aside, and in this case it is called morally invincible. This ignorance is also called antecedent, because it altogether precedes the consent of the will. But vincible is that which a man does not overcome when he can and ought. It is also called consequent, because it follows the determination of the will, insofar as ignorance itself is voluntary and proceeds from free will. As is clear, there is

not given vincible ignorance unless the obligation of inquiring further is known, at least confusedly; for the first thought of things is not in man's power (cf. n. 20 and n. 218).

VINCIBLE or consequent ignorance is subdivided into affected and non-affected. Affected, or directly voluntary, is that by which someone industriously labors, or in which he desires to remain, willing namely to be ignorant of the precepts of the law: either so that he may have an excuse for sin already committed; or so that he may not be drawn back from sin to be committed, according to that (Ps. 35:4): He would not understand that he might do well. This ignorance is found in those who, deliberately, neither attend sacred sermons or instructions, nor seek counsel in doubts, lest they be deterred from an evil purpose. Non-affected ignorance, or indirectly voluntary, is either crass, or simply vincible. Crass ignorance is had in him who, although he does not affect to be ignorant, nevertheless neglects to learn those things which he can and ought to know. This is also called supine, because the thick and fat, and those who lie supine, are accustomed to be idle. But if the negligence is common or light, so that some diligence is applied, yet not sufficient, the ignorance is called simply vincible. This is more or less culpable according to the various measure of negligence and the gravity of the thing concerning which the matter is treated. See St. Alph., III, 269; ed. G., I, p. 549; VII, 48; ed. G., IV, p. 291.

288. PRINCIPLES. I. Concomitant ignorance makes neither the voluntary nor the involuntary positively; but it makes the non-voluntary or involuntary privatively. The reason for the first is, because such ignorance has itself per accidens to the work which is done, and influences nothing into it. The reason for the second is, because that which is unknown cannot be actually willed (V, n. XXVIII).

II. Antecedent or invincible ignorance altogether takes away the voluntary. For whatever proceeds from it is by no means voluntary, neither in itself as being unknown, nor in its cause, namely in ignorance, which is plainly involuntary. But the work is done against the inclination of the agent, if not actual, at least habitual and interpretative. Thus the Doctors commonly (V, n. XXVII). Cf. however n. 125.

III. Consequent or vincible ignorance does not take away the voluntary, but lessens it, yet sometimes increases it. IT DOES NOT TAKE AWAY; because it is voluntary, and therefore its effect is voluntary. But IT LESSENS: for that which is willed only indirectly and per accidens is less voluntary than that which is intended in itself and directly. Whence Doctors commonly say that ignorance excuses, if not from the whole, at least from so much. But IT INCREASES the voluntary, if it is affected, not indeed by reason of itself, since ignorance, as such, is always opposed to the voluntary; but by reason of its cause, which is greater aversion from the right and greater affection into the depraved. For, as St. Thomas (1.2, q. 76, a. 4) observes: "from intention toward sin it comes about that someone wills to undergo the damage of ignorance, on account of the liberty of sinning" (V, n. XXIX).

289. From these things you resolve: 1. Those who do not observe feasts and fasts from ignorance, because they are accustomed to be little solicitous concerning knowing them, are not excused from sin, because their negligence is vincible. Cf. Lehmkuhl, I, n. 78, 3. But if, suspecting nothing concerning an occurring feast or fast, they omit the ordinary means of knowing for one or another week, they are excused from sin, because by such omission they did not fail in the required diligence, and therefore the ignorance is not vincible.

290. He who, noticing that the knowledge necessary for exercising an office is lacking to him, voluntarily performs the office, is held concerning the errors which he foresaw at least confusedly. But if the errors are grave, he remains in a habitual state of sin as long as he has not revoked his evil will, by not seizing the occasion of putting away ignorance. Cf. the things which will be said below n. 317.

291. If negligence in putting away ignorance is only venially culpable, the deed following from it, although grave in itself, will be imputable only unto venial fault. For acts of this kind are voluntary by reason of the cause.

Note. See many other things concerning ignorance in the treatises on Conscience, on Laws, on Sins, on Contracts...

§ 4. On Concupiscence

St. Thomas, 1.2, q. 22-48; St. Alphonsus, V, n. XXIII; ed. G., II, p. 694; Frins, I, n. 295; Surbled, *La Morale dans ses rapports avec la Medecine*, III, p. 16; Descuret, *La Medecine des Passions*.

290. DEFINITION. Concupiscence, in the stricter sense, sounds the same as the tinder of sin, and is defined: A motion of the sensitive appetite rebelling against the spirit and tending toward the delectable good. But in the broader signification, insofar as it is considered here, it sounds the same as passion, and is defined: A motion of the sensitive appetite toward the delectable good, arisen from the imagination of good or evil, with some bodily transmutation (H. Ap., III, 15).

Passion of itself is indifferent: and it becomes good or evil according to the nature of the object which is sought according to or beyond the order of reason. But since passions conduce much to increasing the powers of the will, it will be worthwhile

to use them rightly, to coerce their disordered impulses, and to order them to a good end.

DIVISION. Antecedent and consequent passion are distinguished.

1. Antecedent passion is said to be that which anticipates the consent of the will, and rises up from the apprehension alone of the object; as if someone, from the fortuitous sight of a base thing, is enticed to carnal delight; or on account of an injury received is moved to revenge. Of the motions of the passions, some are first-first: these arise in us without us, that is, without any consent of the will; others are called second-first, namely those which are produced with half-full advertence and half-full consent; lastly, others are second motions, or fully deliberate; these are excited with full advertence and with perfect consent.
2. Consequent passion is said to be that which arises from a previous act of the will; either by redundancy, because a vehement motion of the will overflows into the inferior appetite and moves passion, as is accustomed to happen in those who have the habit of some sin, for example, lust; or by direct excitation, because the will industriously moves the inferior appetite, by stopping, for example, the object before the eyes or the imagination, as if someone turns over in mind an injury received in order to provoke anger (V, n. XXIII, XXV).

Passions are generally numbered as eleven, of which six are in the concupiscible appetite: love and hatred, desire and flight, delight and sadness; but five in the irascible: hope and desperation, fear and daring, anger. Concerning these the Scholastics treat at length, and indeed usefully, because such treatment serves much both to the acquisition of virtues and to the governance of souls. See Schram, *Inst. Theol. Myst.*, § 90.

291. PRINCIPLES. I. Concupiscence or antecedent passion, although it increases the inclination of the will, nevertheless lessens the free voluntary; indeed, if it is most vehement, it can entirely take it away. Thus commonly with St. Thomas (1.2, q. 6, a. 7, ad 3, and q. 10, a. 3).⁸⁹

It is said: 1. It increases the inclination of the will; for the more passion burns, the more vehemently the will breaks out into act.

2. It lessens the free voluntary, and therefore imputability. For it weakens the notion of the voluntary insofar as it obscures the mind and turns it away from consideration of the end, by impeding the intellect, enticed by the sensible object, from weighing the baseness of the act and the offense of God.
3. It can entirely take it away; which happens when passion is so vehement that it anticipates every judgment of reason and consent of the will; as is clear by the example of those who, on account of love or anger, become insane. Yet this happens comparatively rarely, especially as regards external acts; for regularly, as St. Thomas observes (1.2, q. 17, a. 9), members are not applied to work except through the consent of reason (V, n. XXIV, XXV). St. Alph., V, 3, says: "The intellect can be so seized by the delectability of the object offered that it adverts nothing of moral malice in it." Concerning this Berardi (I, n. 408) writes: Let Confessors note these things well, lest they cast some miserable souls into desperation.

Hence it is gathered: 1. First-first motions of concupiscence are not sins, but an occasion either of sins or of virtues. Second-first motions, in every illicit matter, are venial sins. Finally, second or deliberate motions, in a gravely illicit matter, are mortal sins, although their gravity, on account of the vehemence of passion, is somewhat lessened (cf. n. 322). See St. Alph., *Op. dogm.* (ed. Walter, II, p. 413).

2. Good passion, if it precedes the judgment of reason, so that man is moved more by passion than by reason to acting well, diminishes the goodness and praise of the act. You have an example in a father of a family who chastises his children more from anger than from the judgment of reason; in a merciful man who relieves the poor rather from compassion than from the impulse of reason and faith (St. Thom., *de Malo*, q. 3, a. 11).

- II. Concupiscence or consequent passion sometimes increases the voluntary, sometimes is a sign of its magnitude. 1. It increases the voluntary if it proceeds from direct excitation; for then the motion of the will is more vehement, and the obscuration of reason, as being voluntary, does not take away in the effect the notion of the voluntary. 2. It is a sign of its magnitude if it arises from the redundancy of the aroused will into the inferior part: then it is compared to the will as effect to cause; but an effect demonstrates the cause. St. Thomas aptly to the matter (*de Malo*, as above): "and thus consequent passion adds to merit or demerit, because passion is a sign that the motion of the will is stronger; and in this way it is true that he who gives alms with greater compassion merits more, and he who commits sin with greater lust sins more." Cf. 1.2, q. 77, a. 6.

⁸⁹In the places cited the Angelic Doctor indeed teaches these things; but q. 77, a. 7 limits his doctrine with these words: Provided the cause of this passion was not voluntary.

Note. As regards the question: Whether we are held to resist the motions of passion, see what will be said below, n. 322.

Scholium

On Habit

292. It is helpful here to add a few things concerning habit, which influences the voluntary in almost the same way as concupiscence.

DEFINITION. Habit is a firm disposition for acting, caused for the most part from repeated acts. It is said for the most part; for sometimes it happens that habit is generated even from one act, namely if the active thing, as St. Thomas speaks (1.2, q. 51, a. 3), was of great power, as when strong medicine immediately induces health. Cf. St. Thom., 1.2, q. 49-54; Suarez, *Disp. metaph.*, disp. XLIV; *Ami du Clerge*, 1899, p. 529-593.

DIVISION. Since habit always supposes an act of the will, it cannot be divided into antecedent and consequent.

Habit is therefore either admitted by the will, or attacked by the will. It is admitted by the will if it is caused with advertence, that is, with foresight of its generation from the repetition of acts, or also if, although caused without advertence, it afterwards is no longer efficaciously extirpated. But it is attacked by the will if apt means are applied for putting away the habit.

PRINCIPLES. I. A habit admitted by the will sometimes increases, sometimes lessens, but never takes away the voluntary.

1. It increases the voluntary insofar as it gives greater alacrity to the will, without the attention of the mind being lessened in the agent. 2. It lessens the voluntary insofar as man, the slave of custom, is so drawn by it that tranquil consideration of mind is prevented or impeded. 3. It never takes away the voluntary, since man, from the fact that he does not will to cast off the habit, by that very fact has willed in the cause the effects flowing from the cause. See St. Thomas, 1.2, q. 49 ff.

II. A habit attacked by the will always lessens the voluntary, sometimes also takes it away.

1. It lessens the voluntary insofar as the powers of the will and the deliberation of reason are more or less impeded by the habit. 2. It takes away the voluntary in the case in which the habit so vehemently dominates the executive powers that it anticipates the judgment of reason, as is clear among those who are agitated by bile.

Therefore let the human will be constant in repressing habits; for custom is conquered by custom. Yet let it not neglect to apply the physical means prescribed by physicians, by which the powers of nature can increase.

II. On the impediments which remotely influence the voluntary.

293. Among men there are numbered some who not only have obtained a good soul (Wis. 8:19), but also, with God so ordering, obtain a bodily constitution more apt for the exercise of virtue (St. Thom., 1.2, q. 51, a. 1). But others are given who from the cradle are inclined to evil, are infected with the poison of depraved propensities, and direct heart and will upward with the greatest difficulty.

Among all these we can consider three things which most greatly influence the will: heredity, temperament, certain pathological states.

I. On heredity. No one can deny that certain qualities of body and propensities of soul are transmitted, as are: kleptomania, impulse to suicide, etc.; which nevertheless do not pass from parents to children in the same mode, nor according to a constant rule. Although the laws of transmission are explained most difficultly, as being since the whole matter furnishes almost nothing for investigation, nevertheless there is no doubt concerning the fact of transmission.

Heredity without doubt has influence upon liberty, because in reality, as is clear among the children of drunkards, a body more or less apt for operating is transmitted. Sometimes also natural propensities can overturn the judgment of the intellect, so that liberty ceases. But in no way is it lawful to affirm with Determinists that free choice is taken away by the law of heredity, because, with the case excluded in which the will is suddenly drawn under the influence of natural propensity, the mind can remain conscious of its imputability. Considered historically, our affirmation obtains great weight from the fact that it is discovered that children shining with great virtue have had origin from parents given to vice, while, conversely, God-fearing parents have begotten children given to every nefarious crime. And thus it is clear how empty is the argument taken from moral statistics (cf. Lehmke, I, 63), and at the same time how grave a wound they

inflict upon society, whoever before judges excuse any guilty persons whatever, as if from the law of heredity they were not conscious of their crimes.⁹⁰

- II. On temperament. The complex of diverse propensities of body and soul, by which a special disposition is conferred on such a man, is called temperament. If those propensities become firm by efforts of the will, character is had.

Whatever may be the case concerning the diversity of opinions between the ancients and moderns, whether namely four or only two foundations of distinction among temperaments are present, it is certain that in all something dominates, which impresses a special mark on operation.

Temperament in no way takes away, but only lessens THE VOLUNTARY. The reason is, because from constitution there indeed arises an influence upon the will (St. Thom., *Contra Gent.*, I. II, c. 63), but not such that the rational part as if necessarily follows the inferior propensities. Indeed, the rational part, through repeated acts, can so change natural inclinations that someone becomes as it were a new man, as is clear by the example of certain Saints who, choleric by nature, with grace favoring and the will striving, shone forth as a form of meekness.⁹¹

- III. On pathological states. Especially in our times there are given various diseases by which either the will or the center of the nerves is affected; the will indeed, insofar as because of dullness of mind it appears as if impotent to will anything efficaciously; but the center of the nerves, insofar as the nerves are so exhausted or weakened that the agent, although remaining master of himself, labors under great inconstancy or is shaken and depressed by great passions.

1. WEAKNESS OF WILL is called aboulia. This so affects men otherwise robust that liberty is always lessened, sometimes also, but most rarely, taken away. It is necessary that friends furnish help to the miserable, so that they may again learn efficaciously to will or not to will.⁹²
2. WEAKNESS OF THE NERVES brings with itself neurasthenia, if the disorder is sufficiently grave, or hysteria, if the disorder is graver. Sometimes also not constantly, but with some delay interposed, this disorder breaks into a man, and epileptic disease is had. But who can measure, who would dare to measure, the influence of the disease upon the free exercise of the will among those who are situated in this miserable condition? The voluntary is always indeed lessened, and sometimes altogether taken away. Let the sick flee to God, let them hope against hope, let them commit themselves plainly to be ruled by a prudent physician and by a long-suffering and patient confessor. But let the Confessor himself, although it is his part to judge all things rightly, know that in many things he ought to suspend judgment and commit the whole matter to the judgment of God.⁹³

Note. A very useful question pertaining to this matter regards the hypnotic state, into which many cast themselves either for the sake of experiment or of recovering health. It is evident that liberty of the will is much affected through suggestions to be fulfilled afterwards, but from this do not conclude that the agent lacks all responsibility. Cf. what Tanquerey teaches, II, p. 76. Read what will be said below, n. 570, concerning hypnotism.

Chapter II

On the Morality of Acts

St. Thomas, 1.2, q. 19, a. 4; q. 21, a. 1; q. 71, a. 6; St. Alphonsus, V, n. XXXIV; ed. G., II, p. 698; Frins, II, sect. 1 and 2; Cathrein, *Moralph.*, P. 1, l. 11; Tanquerey, *Theol. mor.*, II, p. 19; Willems, *Phil. mor.*, III, p. 32-104.

294. DEFINITION. The morality of human acts is their habitude or relation to the rule of morals, with which they agree, or from which they disagree. Just as artificiality consists in the respect which an artifact has to the rules of art, so morality consists in the respect which a human act has to the rule of morals, that is, according to the Angelic Doctor, to "the dictate of right reason, whether uncreated, which is the eternal law, or created, which is the natural light of man, or participation of the eternal law" (1.2, q. 91, a. 2). Cf. n. 9 and 114 ff., and what St. Thomas teaches, Q. disp. *de Virtutibus*, q. 1, a. 13.

Hence it is established: "that the nature of moral good is situated in the conformity of action with the laws of order, which God requires from men for His own honor and universal happiness" (V, l. c.).

⁹⁰Cf. Tanquerey, II, p. 65; Antonelli, *Medicina Past.*, II, n. 710 ff.; Huber, *Hemnisse der Willensfreiheit*; Linz. *Quart. Schrift*, 1913, p. 13.

⁹¹Cf. the very useful little work of Fr. Cl. Aquaviva, S.J., *Industriae ad curandas animi morbos*, Rome, 1606.

⁹²Cf. Tanquerey, II, p. 72; *Stimmen aus Maria-Laach*, vol. 82 (1912), p. 150 and 282.

⁹³Cf. Lehmk., I, n. 90; Antonelli, *Med. Past.*, II, n. 210; *Ami du CL*, 1911, p. 881; 1914, p. 81; Raymond, O.P., *Guide des nerveux et des scrupuleux*; Huber, *Hemnisse der Willensfreiheit*; Bessmer, *Störungen im Seelenleben*, 1904 and 1906; Surbled, *La Morale dans ses rapports avec la medecine*, IV, p. 41.

- a) Therefore they err who constitute morality either in liberty or in the voluntary. Certainly, liberty and the voluntary are required as the foundation of morality, but its essence is by no means to be placed in them. For the morality of a human act says imputability to praise or blame: but an act is worthy of praise or blame not precisely because it is free, but because it is freely made conformable or deformed to the rule of morals, that is, to divine law, intimated through conscience. Others settle the question thus: He exists in general worthy of praise, and therefore places a moral act, who acts autonomously; but he alone will be worthy of special praise who acts deliberately in relation to such and such an order. Cf. Lehmkuhl, I, n. 93.
- b) They likewise err who place the nature of moral good in the useful and delectable alone; wherefore in the Syllabus, under n. 58, Pius IX reprobated this error: "...all discipline of morals and honorable things ought to be placed in heaping up and increasing riches in any way whatever and in fulfilling pleasures."
- c) Finally they err who seek the distinction between good and evil in public opinion, in the order of justice, as if that alone were good which is done from the motive of obligation which reason alone dictates.

DIVISION. Morality is divided 1. into GOOD and EVIL. For a human act either agrees with its rule, or wanders from it. If it agrees, it is called right, good, honorable: right, because conformable to its rule; good, because this conformity is owed to it; honorable, because it adorns human nature. But if it wanders from its rule, it is called depraved, evil, dishonorable: depraved, because through its wandering it is truly distorted; evil, because it is deprived of the perfection owed to it; dishonorable, because it befouls the rational creature (St. Thom., 1.2, q. 21, a. 1).

It is divided 2. into material or objective, and formal or subjective. The foundation of the division is the twofold rule to which human acts are to be conformed: namely the law, to which they are to be conformed materially and objectively; and the conscience of the one operating, to which they are to be conformed formally and subjectively. Therefore MATERIAL morality is the agreement or disagreement of an act with the external rule or law; but FORMAL morality, agreement or disagreement with the internal rule or conscience of the agent. From this it is clear that one morality can exist without the other, namely when a man acts from an invincibly erroneous conscience. Thus, for example, an act which is consonant with the law, but which the agent thinks opposed to the law, is materially good, formally evil; on the contrary, an act opposed to the law, which the agent invincibly thinks conformable to the law, is materially evil, but formally good. Cf. Bouquillon, *Theol. fund.*, n. 348 ff.

It is divided 3. into intrinsic and extrinsic. Morality is called intrinsic if it arises from the nature itself of the thing; thus the love of God is intrinsically good, hatred of God intrinsically evil; but it is called extrinsic if it rises from positive law alone: thus to eat meats on Friday is extrinsically evil (cf. n. 112).

- 295. For greater understanding of the matter, it must be explained what is intrinsically and extrinsically good or evil (Reuter, *Theol. mor.*, P. I, tr. I, n. 32).
- 296. Intrinsically good is that which, by its nature, agrees with right order, so that it either necessarily ought to be prescribed, for example, adoration of God, or at least can deservedly be counseled, for example, the evangelical counsels. A twofold kind is distinguished: one is good absolutely, for example, an act of faith, hope, and charity; another is good relatively, for example, a vow of chastity.

Intrinsically evil is that which, by its nature, is so repugnant to right order that it necessarily ought to be prohibited. A threefold kind is distinguished: a) Evil absolutely, which is such independently from every circumstance, necessarily and immutably, because in itself it involves repugnance with right order, for example, hatred of God, blasphemy. b) Evil conditionally, which is such not precisely in itself, but by reason of an adjunct, which depends on the dominative power of God or of man: wherefore it can become good, namely by the concession of God or of man acceding. Thus, for example, the killing of a man is intrinsically evil, but conditionally, insofar as concession from one having the right does not accede. c) Evil relatively, which is such only by reason of the danger which it ordinarily has joined to it, as the sight of a base object, the reading of a depraved book, etc. These, when a just cause is given and the proximate danger of sinning removed, can become lawful, as we shall see in its place.

Note. Some authors call conditionally evil actions evil-sounding, insofar as they regularly recall the notion of evil into memory and become good only under certain conditions (St. Thom., *Quodl.* IX, a. 15 in corp.).

- 2. Extrinsically good or evil is that which becomes good or evil not from its own nature, but by force of some precept. Such are, for example, servile works which have been prohibited by the Church on certain days, and therefore on those days become evil. Likewise, walking, indifferent in itself, if it is undertaken for the sake of piety or charity, becomes good.

With these things premised, we shall treat: 1. concerning the principles of morality; 2. concerning its extension.

Article I

On the Principles of Morality

296. Theologians call the principles or sources of morality all those things from which it comes about that some action is good, or evil, or indifferent. For just as the natural goodness of a thing rises from the fullness of its being, or from the collection of all those things which are required for its integrity, so moral goodness rises from the collection of all those things which befit a human act according to right reason; but moral malice rises from the defect of that integrity (St. Thom., 1.2, q. 18, a. 1).

But the integrity of a human act coalesces from object and from circumstances. Hence, so that a right judgment may be made concerning some act, it must be compared with the rule, both as to object and as to circumstances. But one circumstance, namely the end, which on account of its peculiar influence on morality demands for itself a peculiar consideration. Wherefore three principles of morality are counted, namely object, circumstances, and end. Now more about each.

§ 1. On the Object

297. DEFINITION. Object, in the broader sense, designates everything which is set before the will. In this sense, it can include both end and circumstances. In the stricter sense, as it is taken here, object is that thing, or person, morally considered, concerning which a human act is occupied, and toward which by its nature and of itself it tends. Thus another's thing is the object of theft; God the object of an act of love (V, n. XXXVI).

DIVISION. Object is good, or evil, or indifferent, according as it has a relation of agreement, or disagreement, or no relation to the rule of morals.

298. PRINCIPLE. A human act takes morality from the object, and indeed essential, or specific, morality.

The first part is clear: 1. From Scripture: They became abominable, as those things which they loved (Hos. 9:10). The contrary, on account of the same reason, must be said concerning good acts. 2. From St. Augustine (tr. 2, in 1 Ep. St. John, n. 14): "Each one is such as is his love. Do you love earth? you are earth; do you love God? what shall I say? as it were, you are God." 3. By reason: an act takes its morality from that from which it has relation to the rule of morals; but it has this from the object; therefore. Recall the things said n. 294.

The second part is proved: Essential or specific morality of an act is that which is conceived to be in it before every other, without which it cannot be conceived, and which, when other things are changed, remains invariable. Now indeed, such is the morality taken from the object; for to this, by hypothesis, the act by its nature tends, and to this it has itself as to its formal principle. Thus, for example, theft which someone commits in a sacred place in order to intoxicate himself, although it can be conceived without the malice of sacrilege and intemperance, nevertheless cannot be conceived without the malice of injustice.

"Hence, in human actions, before all things one must attend to the object, concerning which they are as concerning their proper term. If the object is agreeable to right reason, the action will be specifically good. If the object disagrees from right reason, the action will be essentially or specifically evil." Zigliara, *Ethica*, l. 2, c. 1, a. 6.

§ 2. On Circumstances

299. DEFINITION. Circumstance, as if standing around the act, is an accidental quality morally affecting a human act already constituted in its moral being (St. Thom., 1.2, q. 7, a. 1).

Therefore two things are required for a circumstance: 1. that it does not attribute first being to the act; 2. that it affect the act morally, that is, modify it in order to the rules of morals. For here the discourse is not concerning circumstances affecting the act only physically or juridically, for example, with which hand someone committed theft (Billuart, *de act. hum.* Diss. 4, a. 3, § 2).

DIVISION. Seven classes of circumstances are numbered, expressed by this little verse of Tully:

Who, what, where, by what helps, why, how, when.

For qualities affecting an act can adhere: 1. to the person of the agent, for example, whether he is a priest, religious, married; 2. to the object of the act, for example, whether the thing taken by theft is in great or small quantity, sacred or profane; whether the person struck is a cleric or layman, etc.; 3. to the place where the action is committed, whether it is public or secret, sacred or profane; 4. to the means of acting, whether they are just or unjust; 5. to the extrinsic end of the one operating, concerning which below (n. 304); 6. to the mode of acting, for example, whether the one operating acted

maliciously or in good faith, intensely or remissly, from contempt or levity, from ignorance or fear, etc.; 7. to the time, for example, whether on a feast day, whether by long or brief delay.

300. PRINCIPLES. I. A human act takes true morality from circumstances. This is proved from Sacred Scripture (Mark 12:43), where the woman is praised who cast only two coins into the treasury, before the Pharisees casting many. The reason is, because circumstances have a relation of agreement or disagreement with right reason: thus in sacrilegious theft the circumstance of the sacred thing violated has a peculiar disagreement with right reason, besides that which it has from the object, or from the fact that it is another's thing. Thus also, other things being equal, greater quantity of alms renders the act more praiseworthy (V, n. XXXIX).

301. II. Circumstances are given which add a new morality to the act. This is clear from the fact that there are circumstances which according to themselves, separately and independently from the first morality sought from the object, import a special and distinct relation of conformity or deformity to right reason or the rule of morals, as in sacrilegious theft.

Circumstances of this kind are said to pass into the object, because with relation to the superadded species they become the object: thus in sacrilegious theft, the thing insofar as it is another's is the object of theft; insofar as sacred, it is the object of sacrilege. Those circumstances are commonly called species-changing.

302. III. Circumstances are given which increase or lessen morality in the same species; wherefore they are called AGGRAVATING or lessening. For there are circumstances which do not have of themselves a distinct morality, but modify that which comes from the object; such as more and less, intense and remiss, etc. Thus the quantity of money says no morality of itself; but it says good morality if the matter concerns alms; evil, if the matter concerns theft. Whence the saying: More or less does not change the species.

But if circumstances transfer sin from venial into mortal, or vice versa, they are said to change not the objective species, which they only increase or lessen, but the theological or demeritorious species. Thus theft of one as does not differ, as to the virtue to which it is opposed, from theft of ten gold pieces; nevertheless it differs as to fault, namely theologically: for the one is a venial sin, the other a mortal sin. Whence a circumstance which makes mortal from venial is called by some increasing unto infinity, because it brings with itself privation of grace and glory (cf. n. 334 and 342, q. 2 and 3).

Note. "A lightly evil circumstance, for example, precipitation in acting, tepidity in prayers, light indignation, concomitant vainglory, etc., coming to an act, does not take away its whole goodness, nor destroy every merit" (V, n. XXXIX). Thus commonly. "If it were otherwise," says Billuart (l. c.), "scarcely any good act would be found, even in the Saints themselves, since it happens so easily that any work whatever is infected by some lightly evil circumstance."

§ 3. On the End

303. DEFINITION. End, in general, is that for the sake of which something is done, namely whose goodness, true or judged, entices the will and determines it to operating.

DIVISION. End is distinguished by reason of origin, or source, into the end of the work or intrinsic end, and the end of the one operating or extrinsic end. The end of the work is called that to which the work is ordered from its nature, as a house to dwelling, alms to relieving the want of a poor person. This end is one and the same as the object, concerning which n. 297. The end of the one operating is called that to which the one operating himself, from his own choice, orders his work: as if someone deceitfully builds a house on another's soil so that he may acquire it for himself; likewise, if someone bestows alms on account of empty glory.

If the one operating intends only the end of the work, the act therefrom contracts a morality not diverse from the morality which it has from the object; whence discourse concerning that does not return.

304. The end OF THE ONE OPERATING, concerning which here the matter is properly treated, is subdivided:

305. By reason of the motion of the will, it is primary or secondary.

Primary is said of that which is esteemed before the others, and which the agent, if perhaps a collision among various ends should arise, would retain first of all. Secondary is that which is subordinated to the primary end, and, with this presupposed, is intended as annexed to the primary. Let there be as an example the twofold end of an adolescent entering Religion: his primary end is that he provide for his eternal salvation; the secondary, that he be exempted from secular cares.

The secondary end sometimes is the cause why the agent applies himself to the work, yet with subordination to the primary end: for example, if a priest not intending to celebrate determines himself to this, that he may show himself pleasing to a friend. Ordinarily then it obtains the name of impulsive cause.

2. By reason of coordination among themselves, it is ultimate or intermediate. The ultimate end is that on account of which we will the rest, but it for its own sake only. The intermediate end is that on account of which we will something, but which again we refer to another: as if someone afflicts the body on account of virtue, which he seeks so that he may please God: God is the ultimate end of this affliction, but virtue the intermediate end.
3. By reason of formal morality, it is good or evil; but there is not given an indifferent end. This is clear from the fact that the end, as such, necessarily involves the notion of some good which the agent pursues. But the pursuit of this good either is according to right reason, or not: in the first case, the end is called good, in the other evil, and thus it is clear that an indifferent end is not given.

The act by which the will bears itself toward the end is called INTENTION: which is distinguished into actual, virtual, habitual, and interpretative; explicit or implicit, according as was said above concerning the voluntary (n. 272, 6.).

305. PRINCIPLES. I. The end of the one operating attributes true morality to a human act. This is clear from the things said; for the end, not otherwise than other circumstances, can say a relation of conformity or deformity to reason. Whence Christ the Lord (Matt. 6:22, 23): If thy eye shall be single, thy whole body will be lightsome. But if thy eye shall be evil, thy whole body will be dark. By the eye, however, the intention of the end is commonly understood; by the body, the action.

Hence St. Alphonsus (*H. Ap.*, III, 5): "Every human act," he says, "whether it is elicited or commanded by the will, is specified by the end for the sake of which it is exercised. Wherefore those acts which have the same end, although materially they are diverse, nevertheless assume the same species; for example, if someone fasts, prays, preaches on account of the glory of God: all these acts are acts of charity. On the contrary, if one and the same material act is elicited by the will on account of diverse ends, it assumes diverse species": for example, if someone serves the sick from charity, from penance, from humility, etc.

The morality which is had from the extrinsic end is accidental with respect to the act to which it comes; for this act has its essential morality from the object, or from the intrinsic end: nevertheless it is called principal with respect to the agent, who primarily intends the extrinsic end, and is borne toward it with greater affection than toward the object itself. For we are denominated not from the act, but from the affection. Thus, for example, he who steals in order to commit adultery is, speaking per se, more an adulterer than a thief (Aristotle apud St. Thom., 1.2, q. 18, a. 6).

306. II. The end of the one operating sometimes attributes multiple morality to an action; but from the end of the one operating and from the end of the work, sometimes only one moral quality results. For distinguishing well this diverse morality, St. Alphonsus gives the following RULES (l. V, n. XXXVIII; ed. G., II, p. 701):
307. If the object is good, but the end of the one operating is evil, the human act is either simply evil, or partly good and partly evil.
- a) It is simply evil, if the end is gravely evil. For the agent, by sinning mortally, totally recedes from God; for example, if someone gives alms to a needy girl in order to allure her to sin. b) Likewise, it is simply evil, if the lightly evil end is the total cause; for example, if someone gives alms solely for empty glory; for right reason disapproves that good be chosen on account of a depraved end (St. Thom., 1.2, q. 18, a. 4 and 6). c) It is partly good and partly evil, if the lightly evil end is a partial cause: for example, if someone, from a sincere affection of mercy, wishes to give alms to a poor person; but because the poor person asks publicly, there also enters in a stimulus of empty glory, which is not repelled.

This diverse morality in the same work can easily be understood from this, that about the same object there can be a multiple act of the will.

2. If the object is good and the end also good, the human act has a double species of moral goodness, as is giving alms in satisfaction for sins. Indeed, as many as are the good ends in the one operating, so many are the goodnesses in the act (as was said n. 305).
3. If the object is indifferent, a good end makes the act morally good, as is walking from obedience.
4. If the object is indifferent, an evil end makes the act morally evil, as is walking for a display of luxury.
5. If the object is evil, an evil end makes the act worse from evil, as to steal in order to support a concubine: in which act a double malice is involved, one against justice, the other against chastity.

6. If the object is evil, but the end of the one operating is good, the act does not lose its malice; nevertheless its deformity is less. The reason for the first is because a good end also ought to be intended well, namely through honest means. And Paul the Apostle (Rom. 3:8) condemns those who do evils that goods may come. The reason for the second is because the agent, from a good end, is borne into sin with a lesser affection: for example, if someone lies in order to free his neighbor from danger.

Appendix

On Good Acts

The things which have hitherto been explained regard the principles of morality in general, insofar as they belong both to good and to evil acts. With respect to good acts, some things must be discussed more specially.

A. When Will an Act Be Good?

307. Resp. I. An act, in order that it be good, ought to be done from an honest motive. Thus St. Thomas, 1.2, q. 18, a. 9; St. Alphonsus, V, n. XLIV; ed. G., II, p. 709; and the Thomists against the Scotists, who admit an indifferent end. The reason is because man, when he acts deliberately, is bound to propose to himself an end consonant with an intellectual creature. Now, according to the order established by God for rational nature, only the honest good has the nature of an end. The useful good cannot have the nature of an end, because it is appetible not for its own sake, but for the sake of another: as are, for example, goods of fortune, which are sought not on account of themselves, but on account of something else. But neither is it lawful to pursue the delectable good as the ultimate end of action. For, as St. Thomas writes (*Contra Gent.*, l. 3, c. 26, n. 7): "Delight is on account of operation, and not conversely." For delight is, as it were, a certain salt and seasoning, which serves for enticing one to actions necessary or useful for life; and therefore it is lawful to act with delight, or even by intending delight, as an intermediate end subordinated to an honest end; but never on account of it alone, so that one rests in it; because it is a disorder if the primary end is ordered to the secondary. And generally, it is not lawful to use things which are to be enjoyed, or to enjoy things which are to be used: in this, according to St. Augustine, is the whole perversity of life. Therefore only the honest good is to be sought on account of itself. Cf. St. Alphonsus, VI, n. 882, fin.; ed. G., IV, p. 64; Peter Lombard, *Lib. Sent.*, I. D. I, n. 2-8.

Hence two propositions condemned by Innocent XI: 8th: "To eat and drink unto satiety, for pleasure alone, is not a sin, provided that it does not harm health; because the natural appetite can lawfully enjoy its acts." 9th: "The work of marriage, exercised for pleasure alone, is entirely without fault and venial defect."⁹⁴ See *Vind. Alph.*, P. VII, q. 8.

From these things, however, it does not follow that the actual pursuit of an honest end is necessary. The arguments brought forward prove two things: 1. neither the useful nor the delectable can be the ultimate end of acting; 2. a rational creature ought to propose to himself an end consonant with reason.

If, therefore, someone, in using things to be enjoyed, or enjoying things to be used, does not directly attend to an honest motive (for example, the conservation of life), but uses them moderately, as befits a being endowed with reason, so that there is present a norm ruling and tempering all things, certainly by force of the action and in the action an honest motive will be present. Whence St. Alphonsus writes, V, n. XLIV, fin.; ed. G., II, p. 703: "If someone approaching the table does not think of the conservation of life, but only of the quality of the food, as Gonet says (*Clyp.*, P. II, tr. 3, disp. 5, n. 38), he does not sin, because he wills such delight, at least virtually, on account of the conservation of life, and thus does not desire it inordinately." Cf. what Lehmkuhl has, I, n. 107.

- II. An act, in order that it be good, ought not only to be done from an honest motive, but also to be referred to God. This is clear from the words of the Apostle (1 Cor. 10:31): Whether you eat, or drink, or do anything else, do all things unto the glory of God. The Fathers more commonly teach that in these words there is contained not mere counsel, but a precept.⁹⁵ And the reason is because "the ultimate end of the human will is the highest good, which is God," as the Angelic Doctor speaks (1.2, q. 19, a. 9).

"However, an actual reference of all things, whether words or works, to the honest good is not required, which would be an unbearable weight and a thing entangled with six hundred scruples; but a virtual reference suffices" (V, l. c.).

⁹⁴Thus taught: Joann. Sanchez, De la Cruz, Pontius, apud Diana. We note, however, that by these [propositions] the opinion which holds that indifferent acts can be given in the individual is not directly condemned.

⁹⁵St. Augustine, l. *de Corrupt. et Grat.*, c. 3 (Migne, P. L., t. 44, col. 918); Coelestinus I, Ep. 21 *ad Ep. Galliar.*, c. 8, n. 9 (Migne, P. L., t. 50, col. 533); St. Maximus Taurin., hom. 89 (Migne, P. L., t. 57, col. 455); St. Thom., lect. 3, in c. III Ep. ad Coloss. i. f. Yet there are not lacking those who teach that in these words of the Apostle there is not contained a true precept; among whom St. Bonaventure is numbered (in 2. D. 41, a. 1, q. 3, concl.). Cf. Cornely, *Comment. in S. Pauli, Ep. 1 ad Cor.*

But this is had sufficiently when, on the one hand, God as the ultimate end is not excluded, and on the other hand the act, contaminated by no disorder of mortal or venial fault, is sought on account of its own honesty, or is referred to some honest end, whether by its nature or from a preceding act of the will. For every honesty is, of itself, ordered to God, the fountain of all honesty.

Things to be noted. 1. Many theologians express their opinion thus: In order that an act be good, it suffices that implicitly, by force of the action, by the weight of the operation, they have an ordination to an honest end, and be referred to God. They call this implicit relation objective. Cf. what Noldin has, I, n. 86. St. Alphonsus (l. c.), with the learned Gonet, speaks only of a virtual relation. As is clear from the example of one approaching the table, by these words he intends a relation implicitly contained in the object; whence his opinion in reality does not differ from the sayings of the moderns. Nevertheless it could be affirmed, not without foundation in the thing, that for this reason such a relation ought rather to be called virtual: because, in any operation whatsoever which is regulated by reason, the preceding intention, directed at least at the beginning of the use of reason to the general goods of man (as are, for example, health, honor, reputation, liberty), and especially to God, as it were revives and acts.

2. A supernatural relation to God is not required in order that our actions be honest; otherwise all the works of unbelievers and sinners, who lack faith or charity, would be sins: which doctrine was condemned by the Church in the proscribed propositions of Baius: “25th: All the works of unbelievers are sins, and the virtues of philosophers are vices,” and “35th: Everything which a sinner, or a servant of sin, does is sin.”

3. The words of the Apostle, according to some, establish the obligation of a supernatural reference of our acts to God. Nevertheless this obligation is satisfied through fulfillment of the precept of faith, hope, and charity (II, n. 7). For all know that man is bound at times to elicit a formal act of charity. But in this act, according to St. Thomas (1.2, q. 100, a. 10, ad 2), this relation is contained sufficiently. But if someone wishes to act more securely, let him often during the day, or at least in the morning, offer all his acts generally to God. Thus often actually, but always truly virtually, he will accomplish all things unto the glory of God. Read the words of St. Alphonsus, l. c., ed. G., II, p. 703.

B. When Will an Act Be Supernatural?

308. An act, in order that it be simply supernatural, ought to proceed from a supernatural principle, and to be done on account of a supernatural motive.

Thus St. Thomas, *de Malo*, q. 2, a. 5, *de Carit.*, a. 11, ad 2; St. Alphonsus, *Op. Dogm. in Trid.*, Sess. 6, n. 88 (ed. Walter, I, p. 514); Suarez, *de div. Gr.*, l. 12, c. 10, n. 15; Mazzella, *de Grat. Chr.*, n. 54; Lehmkühl, I, n. 368; and very many others.

The first part of the proposition scarcely needs proof, since it is evident that no act can be supernatural unless the eliciting principle surpasses the powers of nature.

The second part is supported by the words of the Apostle (Heb. 10:38): Without faith it is impossible to please God; and (Rom. 2:7): To those who seek glory, and honor, and incorruption, eternal life (he will render). By these words is indicated the necessity of tending toward incorruption, that is, heavenly goods (cf. Cornely, Comm. on this place), and the necessity of walking before God in faith, so that man may be able to attain eternal life. And reason supports this: for since acts are specified by the object, only that operation will be supernatural whose motive is taken from faith.

There is given another opinion, which nevertheless does not please us. It denies that a supernatural motive is required, and says it suffices (so that the act can be called meritorious) that it be ethically good and arise from a supernatural principle. See Noldin (I, n. 97). The principal reason which the patrons of this opinion use is this: Where the root is supernatural, the fruits also must be supernatural. This can be considered especially among unbelievers, who, by the motion of actual grace, are disposed toward faith.

But the fundamental principle thus set forth must be denied, in which, if we attend well, a begging of the question lies hidden. Especially it must be denied from this, that, if it is admitted, the axiom celebrated by all utterly collapses: namely, that human acts receive their specification primarily from the object. Whence those acts which, under the inspiration of grace, dispose unbelievers toward faith cannot be called simply supernatural.

Note. This discussion is not merely theoretical; for in the treatise on Penance (n. 1667) the question is put whether contrition, also on the part of its motive, ought to be supernatural.

Corollaries

309. I. For the goodness of an act it is required that it be deficient from no source of morality, neither from the object, nor from the end, nor from the circumstances; but for the malice of an act it suffices that it be deficient on one part

alone. The reason is because “good is from an integral cause, evil from any defect.”

- II. For contracting goodness, a directly voluntary element is required; but for contracting malice, an indirectly voluntary element suffices, as St. Thomas says (1.2, q. 19, a. 7, ad 3). The reason for the first is because the goodness of the will consists in this, that it wills the good. Now the agent does not positively will an effect only indirectly voluntary, but merely permits it. Therefore. The reason for the second is because evil not only cannot be sought, but ought to be avoided; but it is not avoided by him who freely posits an action to which evil is annexed.

To the point St. Thomas speaks thus (l. c.): “For this, that the will be good, it is required that it be good under the aspect of good, that is, that it will the good and on account of the good”; at least virtually or implicitly, as was explained above (n. 307).

- III. Goodness and malice are the supreme genera of morality, each of which is divided into various species. The species of goodness are the various virtues; the species of malice are the diverse vices and sins, as will be said more fully in its place (cf. treatise on Virtues and treatise on Sins).

Article II

On the Extension of Morality

In order that the extension of morality may be rightly defined, two things must be investigated: 1. whether morality extends itself to all human acts, or: whether there is given a human act neither good nor evil, but indifferent? 2. whether and how it extends itself to those effects which follow human acts?

§ 1. On the Indifference of Acts

310. For a right understanding of the matter we note beforehand: 1. here the matter treated is solely the indifference of a human act in order to its morality; not at all its indifference in order to supernatural merit; for such treatment, as we have already observed, belongs to dogmatic theology; 2. that a human act

can be considered in the abstract according to species, and on the part of the object only; or in the concrete and in the individual, insofar as it is on the side of the thing and clothed with all circumstances. With these things briefly noted beforehand, let there be

- 311. PRINCIPLES. I. Not all human acts, according to their species, are indifferent (of faith). For some are of themselves good, as acts of faith, hope, and charity; others, however, of themselves evil, as fornication, the killing of the innocent. The reason is because the objects of these are of themselves consonant with reason, or dissonant from reason (V, n. XLII).
- II. Nevertheless there are given human acts according to their species indifferent. Thus St. Thomas (1.2, q. 18, a. 8) with the common opinion. To this comes the condemnation of article 16 of John Hus, affirming “that there are no indifferent works.” This condemnation cannot be understood of things indifferent in the individual, because very many good Catholics probably defend this same thing; therefore it must be understood of things indifferent in species (Concil. Constant., s. 15, a. 16).
- III. There are not given human acts indifferent in the individual. This is the more common opinion, which St. Alphonsus, V, n. XLIII, confirms by these words of St. Thomas: “It is necessary that any individual act have some circumstance by which it is drawn to good or evil, at least on the part of the intention of the end. For since it belongs to reason to order, an act proceeding from deliberative reason, if it is not ordered to the due end, by this very fact is repugnant to reason and has the nature of evil; but if it is ordered to the due end, it agrees with the order of reason, whence it has the nature of good. But it is necessary that it either be ordered, or not be ordered, to the due end. Whence it is necessary that every act of man proceeding from deliberative reason, considered in the individual, be good or evil. Thus nervously the Angelic Doctor” (1.2, q. 18, a. 9).

Therefore: to walk in the garden, to smell a flower, to rub the beard, or the hands in order to drive away cold, etc., which ordinarily are done indeliberately, are not human acts, but acts of man. But if they are done deliberately, then either they are posited according to the dictate of reason, and therefore are good; or they are done from some dishonest end, or with some vitiated circumstance, and then they are evil, and in no way indifferent.

- 312. IT IS ASKED. Whether an external act adds morality to an internal act, for example, in him who efficaciously proposes that he will give alms?

Resp. 1. That, PER SE, the external act has a special morality which it adds to the internal act, the Scotists indeed affirm, because, they say, externally to operate something good or evil is something greater than only to will to operate it. But the Thomists and others commonly deny it. Their opinion is proved first from Sacred Scripture, where an efficacious will is everywhere reputed as the deed: thus a man desiring a woman is declared guilty of adultery; and Abraham received precisely the same reward as if he had actually immolated his son. The reason is because the external act obtains its whole morality from the internal act, that is, from the free voluntary, without which no morality can be conceived. Whence St. Thomas (in 2. D. 40, q. 1, a. 3): "He merits as much, with respect to the essential reward, who has the perfect will of doing some good, as if he did it, the will remaining equally perfect. Nevertheless the external act adds something to the accidental reward." Thus martyrs who really suffer for Christ have an accidental reward, or aureole, above those who, with equal fervor of charity, merely desire death for Christ.

2. But that, PER ACCIDENS, the external act, regularly speaking, adds some goodness or malice, must be affirmed: "For the external act is often the cause and occasion that the internal act becomes worse, either because the interior acts are multiplied until we execute the acts extrinsically; or because the interior act has a greater duration until it completes the work, which cannot be completed at once; or because it becomes more intense through the extrinsicness of the act. Besides, by the external act the senses are more dulled, and the exterior powers are rendered more prone to evil; scandals are produced; sometimes excommunication is incurred, or irregularity, or the obligation to restitution, which are not incurred through the interior act" (V, n. XL). For the rest, the external act is the complement of the internal act, and from the whole there arises one moral act, and therefore it must necessarily be declared in confession, as will be seen in its place (cf. n. 1692).

§ 2. On the Morality of an Indirectly Voluntary Effect

313. Things to be noted beforehand. For a right understanding of the things which follow, certain notions concerning cause and effect must be premised (II, 63 seqq.; III, 571).

A. A multiple CAUSE is distinguished:

1. By reason of influence, it is physical or moral. Physical is that which acts through a physical influence, as fire produces conflagration, the sun light. Moral is that which efficaciously moves another free cause to acting. Thus one commanding homicide is a moral cause of the killing.
2. By reason of mode, it is immediate or mediate. Immediate is that which produces the effect with no other cause intervening: for example, if someone pierces the breast of another, he is the immediate cause of his death. Mediate is that which does not produce the effect except with another cause interposed. Hence, if you except the sin of scandal, a moral cause is always a mediate cause.
3. By reason of connection with the effect, it is proximate or remote. Proximate is said of that which has a necessary, or at least ordinary, connection with the effect which it produces for the most part: for example, poison, administered in an undue quantity, is a proximate cause of death. That is called remote from which the effect, for the most part, does not occur: for example, the reading of a slightly base thing is a remote cause of pollution.
4. By reason of the order of production, there is given a cause per se or per accidens. A cause per se is that which by its nature tends or is ordered to producing the effect: thus excessive drink is a cause per se of drunkenness. A cause per accidens is that to which an effect is joined beyond the ordination of nature. Thus homicide can follow from drunkenness.

Especially to be kept before the eyes are the two latter distinctions, which give place to a fourfold hypothesis, because both a cause per se and a cause per accidens can be proximate and remote (cf. n. 315).

B. The EFFECT is voluntary either directly and in itself, or indirectly and in the cause (cf. n. 272, 7). Now, an effect voluntary in itself is certainly to be morally imputed, since it is truly intended by the will. An effect voluntary only in the cause cannot be imputed to good: for goodness is not contracted unless it is intended (cf. n. 309, II); but an effect of this kind can be morally evil and be imputed to fault. When this happens will be clear from the following principles.

314. PRINCIPLES. I. An evil effect, voluntary only in the cause, is imputable to fault when it is foreseen as going to follow in such a way that it could and ought to have been impeded, and nevertheless is not impeded. Therefore three things must concur, namely:
315. That the effect was foreseen, at least confusedly. The reason is because if it was in no way at all foreseen, it was not voluntary; for nothing is willed unless foreknown. Hence neither is it voluntary, nor imputable to fault, when drunkenness follows from a moderate drinking of wine whose intoxicating force was unknown. On the contrary,

blasphemies, quarrels, obscene speeches, which are accustomed to accompany the drunkenness of wine-drinking men, are voluntary and imputable as sin. For that such things would occur is sufficiently clear from experience.

316. That the effect could have been impeded, that is, that it was in the power of the agent either not to posit the cause, or to remove it once posited: for with liberty lacking, the voluntary lacks; nor is there ever any obligation concerning the impossible. Hence a priest is not guilty of sacrilege who gives Communion to a hidden sinner publicly asking it; for the cause of the sacrilege which is committed, in such circumstances, he cannot fail to posit.
317. That the effect ought to have been impeded, that is, that the agent is bound not to posit the cause, or to remove it once posited, and indeed precisely for this end, lest such an effect follow: For where there is no law, neither is there prevarication (Rom. 4:15), nor does he sin who uses his right.

If therefore a law, although it exists, has not yet begun to urge, for example, if someone, for the sake of recreation alone, already on Wednesday undertakes a long journey, then certainly the evil effect (omission of Mass), arising from this, cannot be imputed to him. Cf. Lehmkuhl, *Cas. Consc.*, I, n. 97.

But here a great question arises: When ought the effect to have been impeded? when is the agent bound to omit the cause, lest a depraved effect follow from it? Resp. He is bound whenever not all the conditions are present which make the positing of the cause lawful. But what these conditions are, the following principle will indicate.

315. II. It is lawful to posit an honest cause from which there immediately follows a double effect, one good, the other evil; provided that only the good is intended by the agent, and there is present a proportionately grave cause for permitting the evil effect. The reason is because, when a proportionately grave cause accedes, the law ceases by force of which that evil effect had to be guarded against. For fear of grave harm excuses from law (n. 223). But when the law ceases, nothing now stands in the way of the effect being permitted. Cf. St. Alph., III, 483; ed. G., I, p. 702; St. Thom., 2.2, q. 64, a. 7.

The conditions which therefore are required from this second principle are precisely four, namely:

It is required 1. That the cause which is posited, or once posited is not removed, be honest, that is, good, or at least indifferent, that is, not intrinsically evil, and therefore already in itself and independently from every effect illicit, as a lie, adultery, etc., would be. Hence a girl sins gravely who fornicates in order to avoid death.

2. That the good effect follow immediately from the cause, just as the evil; for, if it followed mediately, namely with the evil effect intervening, this evil effect would now obtain the nature of a cause with respect to the good effect: which the Apostle forbids by the words already cited, saying: Let us not do evils, that goods may come (Rom. 3:8).

Hence it is not lawful for a servant to write amorous letters, so that he may please his master.

3. That the evil effect not be intended, nor approved, but merely permitted. Whence it is necessary that there not be present a danger either of intending the depraved effect, when its cause is posited, or of consenting to it, when afterwards it is produced.

Thus a physician who treats women, a student of theology who studies matters little chaste, a confessor who hears sins against chastity, are bound both to remove a dishonest end and to guard against consent in base movements, if perhaps they arise from their action.

4. That the effect not be permitted except from a proportionately grave or sufficient reason; because the natural law by which we are bound to guard against an evil effect ceases only then, when, the nature of things having been weighed and the order of precepts inspected, a cause is had properly excusing, or just and sufficient for permitting the effect. Now, in order that someone may be able, in view of a good effect, to permit an evil, the greater is the excusing cause required, the worse the effect is, or the closer to the act, or also the more probable (Konings, *Theol. mor.*, n. 8).

- a) Worse. Hence one must see what the gravity of the evil effect is. For, for example, a reason sufficient for permitting slight harm to another will not be sufficient that someone expose himself to the danger of killing another.

But for weighing this gravity, it will often be useful to attend to what law the evil effect must be guarded against by, whether by the law of charity, or of religion, or of justice? For not all laws oblige with the same rigor. Thus a cause sufficient

for excusing from a common obligation perhaps is not sufficient for excusing from a special obligation which someone has from office.

- b) Closer to the act. Hence one must see whether the cause influences the effect proximately or remotely. If it influences the evil effect just as proximately as the good, the good effect ought to compensate the evil, because otherwise the good effect would not cancel the evil.

Whence a physician can treat women, although he feels base movements (provided that he does not consent to them), because the good effect, or the restoration of health, compensates the evil. But if it influences the evil effect only remotely, a lesser necessity or utility is required than in the preceding case. Hence you are not bound to abstain from an honest and useful conversation with a person of the other sex on account of carnal movements perhaps arising from it.

- c) More probable. Whence one must consider whether the cause influences the depraved effect per se or per accidens. If per se, the effect will be more probable, because a cause per se is one which by its nature is ordered to the effect. If per accidens, the various circumstances which make the effect more or less probable must be weighed (Billuart, Diss. I, a. 1).

Note. 1. What effect, namely good or evil, some cause is naturally apt to produce, and what kind its influence is, must be judged from the estimation of prudent men. Many cases will be discussed in their own places, especially where the discourse is on cooperation, on scandal, on justice, on the sixth, etc., where also the studious reader will be able to see various examples of the indirect voluntary. Cf. n. 515, 521, etc.

2. The question concerning the imputability of effects which are voluntary in the cause has been weighed here only in a general way; below (n. 322) it will be said when this imputability begins, and how it ought to be judged.

Treatise IV

On Sins

Proemium

On the Notion of Sin

St. Thomas, 1.2, q. 75; St. Alphonsus, V, n. 1; ed. G., II, p. 705; *H. Ap.*, tr. III, c. 2; Suarez, tr. V, *de Virt. et Pecc.*, disp. 3; Lacroix, *Theol. mor.*, tr. 2, c. 4; Lehmkuhl, I, 320; Aertnys, I, n. 218.

316. DEFINITION. Sin is an evil human act, and is defined: A free transgression of the divine law (V, 1).

It is said: 1. transgression, as if a step outside the way; 2. free, because sin essentially consists in an act of free choice; 3. of law, that is, of any precept imposing a strict obligation, and thus it differs from imperfection, which per se is not sin, yet is so per accidens (cf. n. 341); 4. divine, under which name comes every law or precept obliging in conscience. For every law borrows its force and strength, ultimately, from the eternal law of God. Thus the immense malice of sin is sufficiently suggested, which consists wholly in this, that the created will is repugnant to the obliging divine will.⁹⁶

Sin is also sometimes called vice, but improperly; for sin is the act itself, but vice is a habit, or disposition. It is also called crime or delict, namely where it tends to the detriment of the Church or of the republic. Of this kind are apostasy, heresy, schism, simony, sacrilege, sorcery, homicide, adultery, theft, etc. It is called an offense of God insofar as it is against the will of God. An injury insofar as it is against the right of a person.

DIVISION. Sin is distinguished:

1. By reason of existence, into original and personal. Original is that which, committed in the will of Adam, is transmitted by way of generation: concerning this dogmatic Theology treats. Personal is that which man commits by his own will.
2. By reason of entity, into actual and habitual. Actual sin is the sinful act itself. Habitual sin, abstraction being made from the controversies of the schools concerning the nature of sin, is actual sin morally enduring or persevering.

ACTUAL sin, concerning which the discourse here properly is, is subdivided:

1. By reason of precept, into sin of commission and omission. The former is that by which a negative precept is violated: of which kind is, for example, theft. The latter is that by which an affirmative precept is violated, for example, omission of the sacred rite on a feast day.

⁹⁶Cf. Goudin, *Ethica*, q. 5, at the end, where he notes especially eight ways by which sin is against God.

2. By reason of the mode of consummation, into sin of heart, of mouth, and of work. The first is that which by its nature is consummated in the heart, as heresy, hatred, etc. The second, that which is perfected by the mouth or tongue, as detraction, perjury, blasphemy. The third, that which is completed in an external deed, as theft, homicide. Sins of heart are also called internal; sins of mouth and work, external.
3. By reason of object, into sin against God, against neighbor, and against oneself. Against God is said of that which is specially opposed to the reverence due to God: such is sin opposed to faith, hope, charity, or religion. Against neighbor, that which brings harm upon the neighbor, as homicide, detraction, etc. Against oneself, that by which the order of reason is violated, for the right government of oneself, as drunkenness, base delectation.
4. By reason of cause, into sin of ignorance, of infirmity, and of malice. A sin of ignorance is said of that which proceeds from culpable error; of infirmity, that which proceeds from temptation or antecedent passion; of malice, that which proceeds from a perverse determination of the will (St. Thom., 1.2, q. 75-78).
5. By reason of gravity or effect, into mortal and venial sin. Mortal is that which gravely offends God and brings death to the soul. Venial, that which lightly offends God, and which of itself preserves in the soul the root of pardon, that is, sanctifying grace (cf. n. 335, 340).
6. By reason of imputability, into material and formal. Material sin is the evil act itself, considered according to itself, or an involuntary transgression of law, and therefore not imputable to fault. Formal sin is the very malice of the act, or deliberate transgression of law, which therefore is imputable.
7. Lastly sin, by reason of the agent, can be divided into one's own and another's. One's own is said of that which is perfected by one's own action. Another's, that which indeed is committed completely by another, yet is deservedly imputed to one's own will, as to a cause in some way concurring. Concerning others' sins the matter will be treated below, where the matter concerns those cooperating in sin (n. 517), and especially where we shall treat of those cooperating in harm inflicted upon the neighbor (n. 976 seqq.). Cf. Suarez, tr. V, *de Vitiis*, disp. 3, sect. 1.

With these distinctions and definitions premised, we shall treat: 1. of the requisites for sin; 2. of the distinction of sins; 3. of the gravity of sins; 4. of internal sins; 5. of capital sins; 6. of the danger of sinning.

Chapter I

On the Requisites for Sin

St. Thomas, 1.2, q. 9-15; St. Alphonsus, V, 4; ed. G., II, p. 707; *H. Ap.*, III, 25; Suarez, *de Vol.*, disp. VI, VIII; Lehmkuhl, I, 322; Cathrein, *Phil. mor.*, n. 42; La Croix, *Theol. mor.*, l. I, tr. 2, q. 126; Tanquerey, t. 2, p. 278; Gerigk, *Wesen u. Voraussetzung. der Totsünde*.

For formal sin, whether mortal or venial, it is required that it have been admitted knowingly and freely; that is, that there be present: 1. advertence of the intellect to the malice of the object; 2. consent of the will.

Article I

On the Advertence of the Intellect

317. DEFINITION. Advertence is consideration or thought of the malice and prohibition of the act, or at least some doubt or suspicion of sin, or of the danger of sinning.

DIVISION. By reason of the existence of the act, advertence is usually distinguished as threefold: 1. actual or direct or express, which is had here and now while acting; 2. virtual or indirect (interpretative in a certain respect), which was had when the cause of the sinful act was voluntarily posited; 3. merely interpretative, which exists neither in itself nor in another preceding thing, but consists only in this, that someone could and ought, by physical and remote power alone, to advert to the malice.

By reason of accidental quality, advertence is further distinguished: 1. into full advertence, if nothing impedes the mind from acting perfectly, as in one perfectly awake; 2. into protracted, which lasts as long as the sinful act lasts; 3. into clear and distinct, by which the respective species and grades of malice are known; 4. into reflex, by which the one sinning reflects upon his advertence. Cf. n. 336.

318. PRINCIPLE. For formal sin virtual advertence is required and suffices (V, l. c.; *H. Ap.*, III, 25).

319. It is required: for the opinion of those who say that merely interpretative advertence suffices cannot in any way be sustained. For the axiom remains unshaken: Nothing is willed unless it is foreknown, either in itself or in the cause; “because where there is no knowledge, there is no liberty; and where there is no liberty, there is no sin” (VI, 610). Whence the evil which man commits and to which he in no way, not even confusedly, attends cannot be imputed to him, and is only material evil. “Otherwise,” says St. Alphonsus (V, 4, v. *Hinc*), “it would follow that very many men would find themselves burdened with many mortal faults, although, concerning them, they had never had any knowledge,” which is absurd. Hence, “if ignorance was in no way voluntary, and the man had no actual advertence to the malice or danger of that thing, neither directly nor indirectly, neither in itself nor in the cause, then in no way are the errors which he does not advert to imputed to him”... Likewise, “in order that the effects of some cause be imputed to someone, there must necessarily precede, at least in the beginning, actual and express advertence to the malice of the object” (V, 4, v. *Contra*). Cf. n. 314 and 315, note.
320. It suffices: for equally false is the opinion of those who assert that, here and now, for every sin, actual and express advertence is required. The Psalmist prays: The offenses of my youth, and my ignorances, remember not, O Lord (Ps. 24:7). Among the offenses of youth, many certainly were committed from virtual advertence. Now he calls all these just as much sins, as when he was entirely ignorant of God, most gravely offending him. Add that if actual advertence to the malice of an act were absolutely necessary, men, the more wicked they are, would be the more excusable; for the more wicked they are, the graver are the evils they perpetrate, noticing little or nothing of the malice of their acts. Indeed, there are not lacking those who, while sinning, think that they act rightly, led by their culpable ignorance, as again is gathered from Sacred Scripture: The hour comes, that everyone who kills you will think that he offers service to God (John 16:2). Cf. I, 170.
321. Corollaries. 1. Hence St. Alphonsus says: “It can happen in many ways that several evils, although they are not actually and expressly adverted to, nevertheless are well imputed to fault to those committing them, if their ignorance (or inadvertence) is in some way voluntary” (V, 4, v. *His positis*).

Ignorance, however, becomes voluntary and imputable to sinners in a fourfold way (V, 4, v. *Primo*):

- a) Through NEGLIGENCE in learning those things which can and ought to be known. “Ignorance,” says St. Thomas, “is voluntary either directly, as when someone studiously wills not to know some things, so that he may sin more freely; or indirectly, as when someone, on account of labor, or on account of other occupations, neglects to learn that by which he would be drawn back from sin. For such negligence makes the ignorance itself to be voluntary and sin, provided it is of those things which someone is bound and able to know” (1.2, q. 6, a. 3).
- b) Through PASSION, which someone deliberately wills to follow. “For one willing to fulfill some passion, for example, vengeance, consequently admits, at least confusedly, whatever perverse means conduce to fulfilling the passion. Whence the effects proceeding from it, although they are not voluntary in themselves, are nevertheless voluntary in their cause, namely in adhering to the passion. Thus also St. Thomas teaches, who calls the ignorance of one operating through passion ignorance of bad choice” (ibid., a. 8).
- c) Through a DEPRAVED HABIT, if someone, namely, omits efficaciously to amend the depraved habit. “In this case, the evil acts which proceed from a bad habit are likewise voluntary, either in their cause, namely when in its beginning the depraved custom is contracted voluntarily; or rather... because such badly habituated sinners, although they have a less ready knowledge than others, nevertheless always have some actual knowledge of their crimes, sufficient to render the acts deliberate, and (if the matter is grave) also mortal. For since they make little of sin, there is not made in their souls that sensible and memorable impression which is made in another having a less depraved conscience. And hence it happens that there does not remain in their memory a trace of that actual knowledge which they sufficiently had before concerning the sin; or the trace is so slight that, when questioned, they easily respond that they did not advert. But a cautious confessor ought not to give faith to them” (cf. n. 293).
- d) Through INCONSIDERATION, “if, namely, a man in acting knowingly neglects to apply the consideration which the matter to be done deserves. For to him who already adverts that something must be considered further, and nevertheless wills to operate precipitately, all the errors which he commits are deservedly imputed.” Thus all those to whom some OFFICE of great moment has been committed are admonished and stirred by their conscience that, with greater diligence applied, they fulfill the parts of their office: from which it happens that they at least advert that they ought to advert; which already suffices, so that the evils commonly resulting from negligence are deservedly imputed to them (cf. n. 125, 974).

2. It is not required for formal sin that the sinner expressly think of the offense of God.

For, just as implicit thought of God suffices for worshiping him, so also for offending him. “He who operates against right

reason, even if he does not think that he wounds God, already in reality wounds him; for by offending rational nature, he at the same time offends the author of that nature" (V, 4, Opp. 3 and 11).

3. Vain is the distinction between theological and philosophical sin, which some attempted to introduce. "Philosophical, or moral, sin," they said, "is a human act disagreeing with rational nature and right reason. But theological and mortal sin is the free transgression of the divine law. Philosophical sin, however grave, in him who either is ignorant of God, or does not actually think of God, is grave sin, but is not an offense of God, nor mortal sin dissolving the friendship of God, nor worthy of eternal punishment." This proposition indeed was condemned by Alexander VIII as scandalous, rash, offensive to pious ears, and erroneous (Decr. 24 Aug. 1690). Cf. Viva, on the second proposition.

Article II

On the Consent of the Will

320. DEFINITION. Consent is the acceptance and complacency of the will in that which is proposed by the intellect.

Those things which precede consent or dissent must carefully be distinguished from the very act of the will consenting or dissenting. For although that act by which a man says in his heart, I will, or I do not will, is most simple: nevertheless, before the will gives full consent, very often it proceeds through certain distinct degrees, so to speak; this procession and gradation appears especially in the first mortal sin which is committed by an innocent person, or in a relapse into grave sin after long amendment, or in the transition from internal sins to external sins, or in the deliberation of perpetrating enormous crimes.

Therefore temptation precedes the consent of the will; in temptation man has himself passively. Hence there is solicitation to sin through motives alluring to it, together with a certain indeliberate delectation, which spontaneously follows in the inferior part, concupiscible or irascible; hence inclination, or propensity of the will. Finally there is deliberation of the mind weighing spiritual motives calling away from sin, and motives of sensible good alluring to evil. All these things precede consent, which is had only then when the will comes from potency to act by saying: I will, I accept; or to dissent, by saying: I do not will, I reject (V, 3; Pacetti, *Synops. doctr. mor.*, p. 9).

DIVISION. Consent is distinguished in many ways, as was said above concerning the voluntary (n. 272).

321. PRINCIPLES. I. For every sin the consent of the will is required (V, 5). The reason is clear, because without consent the voluntary is not given, and therefore imputability is not given. The will is the principle and proper cause of sin, according to that saying (Matt. 15:19): For from the heart come forth evil thoughts, adulteries, etc. Whence St. Thomas teaches (1.2, q. 15, a. 4; q. 74, a. 7) that sin is not judged consummated unless the superior part of the soul has consented to it.

Nevertheless express or direct consent is not required; implicit or indirect suffices: for he who wills the cause also wills, though only indirectly, the effect. But merely interpretative consent by no means suffices, namely the consent which someone would have if he were placed in such an occasion. For interpretative consent is not consent, but only a certain disposition to consent: which disposition is not to be imputed as sin unless in some way it passes into act (VI, 610, obj. 4).

- II. For a sin of omission a positive act of the will is required; namely the purpose of omitting the prescribed work: "For the will is not exercised nor does it sin, except through an act" (V, 9; *H. Ap.*, III, 45). Whence an act by which the will at least chooses to have itself negatively is required, not indeed on the part of the work, but on the part of the one operating, as the internal cause of the omission (cf. n. 322, q. 2; 324, Reg. 2, 4).

322. Questions. QUAER. 1. How does he sin who has himself negatively, and does not positively resist a movement of the sensitive appetite, concerning an object gravely evil? (V, 6-9; *H. Ap.*, III, 42).

It is noted beforehand. 1. Those movements are especially of pleasure and anger. 2. Resistance, or solicitude not to consent, can be, by reason of intensity, simple displeasure, a good purpose, express unwillingness; by reason of mode, direct, that is, contrary to the sensitive movement, or diverse, that is, by conversion to other things; by reason of act, positive, if it posits an act of resisting, negative, if it does nothing.

Resp. 1. If the danger of consent is only remote, the true opinion holds that it is venial not to resist illicit movements positively, but not mortal. The reason is: a) "because consent to sin gravely does not proceed from appetite, but from the will, which, when it does not positively consent, does not commit a mortal sin; ... b) because, if we were bound under grave obligation to repel positively all inordinate movements, we would be bound to the impossible: for it is impossible," as Cajetan says, "positively to coerce all these movements taken collectively." Nevertheless, resistance must be made

“insofar as man ought to beware lest appetite draw the will after itself; but this obligation, when the danger of consent is not proximate, is only light.” Cf. St. Thom., 1.2, q. 74, a. 4.

2. Where the danger is proximate, as when vivid “venereal delectation supervenes, we are bound under grave obligation to resist it positively, for example, by praying, by eliciting an act of the love of God; because movements of this kind, when they are vehement, for the most part, if they are not positively repelled (at least through an act of simple displeasure), draw with themselves the consent of the will.” Thus the Doctors commonly. “It also suffices, in the act of commotion, to divert the soul to other things, since this very thing is to resist positively” (cf. n. 378).

Note. If the movements are light, it will be better to despise them.

3. If a just cause is present, “there is not an obligation of resisting carnal movements positively, namely: a) if someone has learned by experience that by resisting the movements are rather excited and increased; b) if the movements have arisen from a necessary or useful action, for example, from hearing confessions, from reading base things useful to be known, from touch necessary for healing, and the like ...; c) if the temptation lasts long, and it would be too troublesome continually to repel the movements positively.”

In these circumstances “it will be enough to have oneself negatively (or permissively), with the firm purpose of never consenting; for the very actual care of not consenting then suffices to free man from fault, at least mortal fault, even if not from venial, if the resistance (solicitude not to furnish consent) is tepid.”

QUAER. 2. Whether INDIRECT consent suffices, so that the omission or action following from it is in itself sin, in other words, so that the omission and the action themselves are sinful?

Resp. 1. Some deny it, because such an omission (or action), while it occurs, is not voluntary in itself, and because there is no liberty; whence it will be sin only in the cause.

2. The truer opinion affirms it. The reason is because, although for a sinful omission (or action) it is required that the voluntary be present, nevertheless the voluntary in the cause suffices, and the necessity, if it is present, is a consequent necessity which does not take away liberty (St. Alph., IV, 149; V, 10; VII, 40). But the depraved effect is called sin not from itself, but in itself, insofar as it proceeds from a cause not retracted, morally persevering, and is joined with that cause, forming with it one moral being, in almost the same way as an exterior act is denominated and is in itself sin, not from itself, but from the interior act, in which alone there is formal malice. Therefore, since that sinful effect constitutes a true sin, it must necessarily be declared in confession.⁹⁷

Hence: a) The gravity and species of sins committed from indirect consent depend entirely on the actual advertence which was directly present in the preceding consent, by thinking of vincible ignorance and of the obligation of laying it aside: because there the formal element of sin is found. But their number (unless it was already determined in the very foresight) depends on the positing of the acts proceeding from the cause not retracted; because then the material element is joined to the formal, for constituting as many sins as there are acts.

- b) Sin voluntary only in the cause is imputed inchoatively and with respect to affection from the time at which its cause is knowingly posited; but consummatively and with respect to the effect, when it is completed externally in work. Whence, if the cause has been posited, although the effect has not occurred, or by reason of another supervening reason has become licit, nevertheless all the sins determinately foreseen in the cause are to be declared in confession as internal sins; on the other hand, if the effect has followed, it is not enough to confess only the cause which was posited with foresight of the sinful action or omission, but the very sin really committed must also be confessed (V, 10; cf. I, 170).
- c) If the cause is not evil in itself, it assumes the malice of the effect alone: in which case it suffices to confess only the effect, for example, if play was the cause why the sacred rite was omitted. But if the cause was evil in itself, not only the effect, but also the cause, must be declared in confession: for example, if someone omitted the sacred rite in order to steal something. Nevertheless one sin can be declared separately from another (V, 9, note 2).

⁹⁷The question here discussed often will have little force in practice, because with difficulty will there be lacking in the agent some actual advertence, however minimal, yet sufficient for committing true sin. Cf. what, with St. Alphonsus as guide, we noted above, n. 319, c). But if, with respect to such or such an effect proceeding from ignorance, or habit, or passion, or culpable inconsideration, actual advertence were really lacking in the agent, let the conclusion which we have embraced stand. The authors themselves who do not follow us with respect to conclusions to be drawn seem to consent with us in establishing the principles. Lehmkuhl says (I, 78, 3): he who studiously declines to inquire whether it is a fast day or feast day, and on that account fails to fulfill the law, is indeed guilty of the violated law. Noldin writes (I, n. 313): It is clear that, for committing sin, it suffices that the malice of the act be apprehended in the cause of the evil act: for the evil effect which is foreseen as going to follow in the posited voluntary cause is voluntary in that cause and is imputed to the agent, although afterwards it is posited without actual advertence. Thus also Gopfert (*Moralth.*, I, n. 211).

- d) Effects are no longer imputed as sin if the cause has been retracted at least implicitly, through universal contrition, and has been removed as far as possible. For, although the effect, in its physical and material being, simply depends on the cause already posited, nevertheless it does not obtain the denomination of sin except from the cause (the past will) morally persevering, insofar as this has not been retracted through penance. Therefore, where a man repents of the cause which he posited, the effect can no longer be called sin. Thus a priest who neglected the study of theology, if once in life he truly grieved for his sins, by that very fact retracted his negligence; and consequently neither the errors which he commits, nor the harms which follow from them, are imputed to him, unless perhaps he adverts anew to his ignorance and culpably does not lay it aside.

What must be observed from this doctrine with respect to censures, and with respect to restitution, will be said in their places (n. 1264 and 978). Cf. VII, 368.

Chapter II

On the Distinction of Sins

St. Thomas, 1.2, q. 72; St. Alphonsus, V, 31; ed. G., II, p. 732; *H. Ap.*, III, 55; Lugo, *de Poenit.*, disp. 16; Aertnys, l. I, n. 220; Lehmkuhl, I, n. 348; D'Annibale, *Summula Theol.*, I, n. 278 seqq.; Gopfert, *Moralth.*, vol. I, § 37.

323. The Council of Trent teaches (Sess. XIV, c. 7) that by divine right there must be declared in confession both the species and the species-changing circumstances of sins, and their number. Hence sins must carefully be distinguished: 1. according to moral species; 2. according to number.

Article I

On Specific Distinction

STATUS OF THE QUESTION. That sins are distinguished into various species is clear. But it is asked whence this specific distinction of them must be taken, in other words, what is the reason why some sin has a special deformity or opposition with respect to the law of God.

In solving this question, the opinions of theologians do not agree. Some, with St. Thomas, think that specific distinction must be taken from objects diverse in species; because, they say, sin does not have species on the part of aversion..., but on the part of conversion, according as it is a certain act. But others, with Scotus, hold that it must be taken from the virtues to which sins are opposed; because sin, taken formally, consists in opposition to the virtue of which it deprives. Each opinion is probable, and practically each in reality coincides in the same thing, as St. Thomas also adverts (1.2, q. 72, a. 1, ad 2).

And indeed, to say, for example, that theft takes its proper species from this, that for its object it has another's good unjustly taken away, or from this, that it is opposed to the virtue of justice, plainly comes back to the same thing. Yet since the method according to which sins are distinguished through oppositions to virtues is plainer and easier, we shall hold this very one (V, 32; *H. Ap.*, III, 55).

324. PRINCIPLE. The specific distinction of sins is taken from opposition to several diverse virtues, and from diverse or contrary opposition to one and the same virtue. It helps to resolve that principle into several special rules:

RULE 1. Sins which are opposed to virtues specifically diverse are specifically diverse. The reason is because each virtue has a special distinct goodness, or conformity with the divine law; therefore similarly a sin opposed to some virtue contracts a special and proper deformity, or malice, for itself.

Hence you will resolve: 1. Therefore heresy, despair, hatred of God, perjury, fornication, theft, lying, etc., are specifically diverse, because they are opposed to virtues specifically diverse; namely, heresy to faith, despair to hope, hatred of God to charity, perjury to religion, fornication to chastity, theft to justice, lying to veracity.

2. Therefore in one and the same act several sins specifically diverse can be found, because one and the same act can include opposition to diverse virtues. Thus, in the voluntary killing of a cleric, there is found a double sin specifically diverse, one against justice, and the other against religion; and a fourfold sin in the crime of a man bound by a vow of chastity and sinning with a married blood-relative, since diverse virtues are wounded, namely justice, piety, religion, and chastity.

RULE 2. Sins opposed in a diverse way to the same virtue, or which wound goods specifically diverse of the same virtue, are specifically diverse. For one and the same virtue can have for object various goods which, according to moral estimation,

are specifically diverse: for example, the virtue of justice has for object goods of fortune, goods of reputation, goods of life, etc. Whence it includes various rectitudes or honesties, and these specifically diverse. Therefore also the sins which are opposed to these diverse rectitudes or honesties have diverse malices, and are distinguished in species (Konings, n. 212).

Hence you will resolve: 1. Therefore theft, robbery, detraction, contumely, homicide are specifically diverse; for although the aforesaid sins are opposed to the same virtue of justice, nevertheless they wound diverse goods of this virtue: theft, namely, goods of fortune; robbery, the good or inviolability of the person; detraction, the good of reputation; contumely, the good of honor; homicide, the good of life.

2. Local, real, and personal sacrilege are also specifically diverse, although they are opposed to the same virtue of religion; for a sacred thing, a sacred person, and a sacred place are goods specifically diverse according to moral estimation.
3. The violation of ecclesiastical fast through the use of flesh meat, and the violation of the same fast through multiple refectation, are specifically diverse; because the former violation is opposed to the virtue of temperance insofar as it moderates the quality of food; but the latter, insofar as it moderates the quantity of food.
4. Sins of commission and omission against the same virtue are, for the most part, specifically diverse; for ordinarily they wound diverse goods or offices of the same virtue; and thus heresy and the omission of a prescribed act of faith differ in species; despair and the omission of an act of hope; hatred of God and the omission of an act of charity.

On the contrary, they do not differ in species if they wound the same good of virtue. But this happens when the affirmative and negative precept are reduced to the same thing; because then to commit is the same as to omit. Hence theft and the omission of restitution are not specifically diverse, because it is the same thing to carry off and to retain another's property.

Note. When the diversity of goods of some virtue is sufficient that by reason of it sins be judged specifically diverse must be sought both from the nature of the several goods and from the common judgment of theologians.

RULE 3. Sins which are opposed to the same virtue in a contrary way, that is, through excess or through defect, are specifically diverse (V, 30). The reason is because movement is specified by the term to which. Now excess and defect are terms specifically diverse; therefore the movements also, or acts of the will, which are terminated at them, are specifically diverse (St. Thom., 1.2, q. 72, a. 8; cf. 1.2, q. 23, a. 2).

Hence you will resolve: despair and presumption are specifically diverse sins, which indeed are opposed to the same virtue of hope, but in a contrary way: despair, namely, through defect; but presumption through excess. Likewise avarice and prodigality, which are opposed to the same virtue of liberality, prodigality through excess, avarice through defect. Similarly flattery and excessive harshness, the former of which recedes by excess, the latter by defect, from the same virtue of affability. Likewise sluggishness in learning due knowledge, which by defect, and excessive curiosity, which by excess, are repugnant to the same virtue of studiousness.

Corollary. Sins which are repugnant to several laws or precepts issued from a diverse formal motive, namely toward the special good of a virtue, include several malices diverse in species.

For in such a case diverse virtues, or honesties of virtue, are wounded, which the various laws intend: as if someone broke a fast prescribed by the Church and promised by himself to God through a vow, he would wound both temperance, from which the Church commands fasting, and religion, from which God commands vows to be observed. On the contrary, if laws have been issued from the same formal motive (or from the same intrinsic end of the work), and are distinguished only on the part of legislators (as is the case in theft, which is prohibited by divine and human law), they do not introduce a specific distinction of sins; because diversity of legislators does not make the precept formally diverse, but only materially (V, 33).

Hence the omission of the sacred rite on a feast day which is at the same time Sunday constitutes one species of malice, because the hearing of Mass is prescribed by each law from the same formal motive of religion, and therefore from one intention of the legislator (Reuter, *de Leg.*, n. 147; *de Pecc.*, n. 345).

325. Questions. QUAER. 1. How can it be discerned whether laws, several in number, have been issued from the same FORMAL MOTIVE, or from a diverse one?

It is noted beforehand. The difficulty can exist only concerning positive laws. For diverse obligations of the natural law are not given except on account of diverse goods of virtue. Hence it is evident that all obligations of the natural law have a distinct formal motive. Thus, for example, the killing of a priest is prohibited from a double formal motive of justice and religion (V, 33; Salmant., tr. 20, c. 12, n. 9-12).

Resp. 1. Positive laws whose matter is morally diverse have a diverse formal motive: for example, the law prohibiting servile works on feast days, and the law prescribing the hearing of the sacred rite on the same days, indeed have the motive of the worship of God, but in a diverse way. Wherefore he who transgresses this double precept commits two sins, and these diverse in species. On the contrary:

2. Positive laws whose matter is morally the same are judged to have the same formal motive. Thus, for example, the threefold law of fasting, on account of a vigil, on account of Ember Days, and on account of Lent, has one formal motive, the honesty of temperance. Except if from circumstances, from the context of the law, from the penalties joined to it, the contrary is certainly clear: for example, if a confessor, after hearing sins, imposes on a penitent a fast already prescribed by the Church, this fast is rightly judged to be prescribed from a new formal motive, namely from the motive of penance. Wherefore the penitent violating it commits a double sin, one against temperance, and the other against religion.
3. A positive law which has the same matter with the natural law has regularly been issued from the same formal motive of the natural law, whose execution it is judged to urge. Thus human laws prohibiting homicide, theft, etc., have been issued from the very motive of the natural law.

QUAER. 2. Whether PRECEPTS strictly so called, not otherwise than positive laws, have a diverse formal motive according to diversity of matter?

Resp. Negatively. Precepts strictly so called, or commands of a Superior, are regularly judged to be imposed not from a diverse, but from the same formal motive of obedience; just as vows of themselves are specified from the virtue of religion, although their matters of themselves look to diverse virtues (cf. III, 335; IV, 38).

Hence: 1. If a Superior gives diverse precepts in free matter, that is, in matter which by no law is here and now prescribed, for example, if he prescribes study, prayer, some act of charity; the inferior who transgresses those various precepts does not commit sins distinct in species, but sins only against obedience. Therefore the matter of disobedience is not to be declared in confession, but only the number of transgressions (2.2, q. 104, a. 2, ad 1). 2. But if the Superior absolutely prescribes a thing already prescribed by some law (for example, a father who, in order to conquer the sloth or levity of his son, with his paternal authority interposed, prescribes to him the hearing of Mass on a feast day), the inferior contumaciously refusing commits two sins distinct in species: one indeed against the law of the Church; the other against obedience owed to one legitimately commanding. Yet otherwise it must be said if the Superior does not strictly prescribe, but only admonishes (cf. n. 690 seqq.).

Note. Sometimes a virtue obliges indirectly, namely from the command of another virtue. In this case, the omission of the commanded act is a sin, not against the virtue from which it was to be elicited, but against the commanding virtue. Thus he who, pressed by a vehement temptation against chastity, omits to pray, sins not indeed against religion, but against chastity; and the reason is because the obligation of the means and of the end is the same.

Article II

On Numerical Distinction

326. This is the question: whence sins which are contained within the same species receive numerical distinction or individuation. The difficulty of the matter arises from this, that moralists take an act morally; because, on the one hand, acts physically several and diverse can morally constitute only one sin, and because, on the other hand, an act physically one can be morally multiple and make several sins. To solve this question, authors commonly assign a double source of numerical distinction, or a double root, one on the part of the subject, the other on the part of the object; namely, on the part of the subject, the multiplicity of morally interrupted acts; but on the part of the object, the diversity of total objects.

It is clear that where in one act several sins specifically distinct are given, for example, against justice and charity, these are also multiplied numerically.

§ 1. On the Multiplicity of Morally Interrupted Acts

327. Things to be noted beforehand. By moral interruption is understood that circumstance of an act by which it comes about that the act in itself, absolutely, is terminated, and so is disjoined from the following act, that in no way can it be considered as constituting morally something one with it.

A twofold INTERRUPTION OF ACTS is distinguished: one voluntary, the other involuntary.

Voluntary interruption (or interruption from the choice of the agent) is that which occurs either through formal retraction, as if someone truly repents of an evil act; or through free cessation from an act, say, if someone from weariness or fatigue, without the purpose of proceeding further, desists from what has been begun, or also turns himself to other things. In these cases, if he returns to the evil will, the new act will be morally diverse from the first, since it does not proceed from the first, and therefore it will be a new sin (V, 38).

But involuntary interruption (or interruption beyond the choice of the agent) is that which occurs through the natural cessation of an act, for example, on account of distraction, on account of sleep, etc.; likewise on account of a notable delay of time, so that, according to the nature of the action, the act of the will is judged by the judgment of prudent men already to have ceased.

To moral interruption is opposed MORAL UNION, by which it comes about that several acts coalesce into one. It is commonly had from a double cause: 1. if the acts proceed from the same impulse of concupiscence, or from the same affection of the will; 2. if they are ordered by the agent, by nature, or by human institution to some principal act primarily intended.

328. PRINCIPLE. There are as many sins as there are morally interrupted acts of the will concerning the same object. The reason is because through such interruption acts of the will become complete, and each is constituted in its own proper malice, and therefore through a new act of the will new malice is begotten.

But since, among sinful acts, there are distinguished merely internal acts, that is, sins of heart; internal acts to be consummated externally, that is, efficacious desires, purposes which tend efficaciously to external sins of mouth or work; and finally external acts, diverse rules must be established, so that the application of the aforesaid principle to each category can be made more easily.

RULE 1. MERELY INTERNAL acts, unless they proceed from the same impulse of passion, are interrupted through any natural cessation whatsoever.

St. Alphonsus explains the matter thus (V, 37; *H. Ap.*, III, 58): "If they are sins of heart, which are entirely perfected internally, as hatreds, heresies, morose delectations, base desires, etc., these, as soon as they are multiplied, are interrupted; so that there are as many sins as there are acts of the will consenting to them. The reason is because, with respect to such acts, one does not depend on another, and therefore they cannot be morally continued ... And therefore the penitent indeed ought to explain, if he can, how many times he consented in will; but if he cannot, because the depraved disposition of soul was long-lasting, then it suffices to confess the time in which he persevered with such a disposition, explaining, at least in general, whether those interruptions (besides the ordinary interruptions of sleep, etc.) were notably rare or frequent. But if several acts of this kind proceed from the same impulse of concupiscence, they constitute one mortal sin, even if some brief interval intervenes among the acts."

RULE 2. Internal acts TO BE CONSUMMATED EXTERNALLY for the most part are not interrupted by ordinary natural cessation (say, by sleep, common distractions); but they are interrupted by a lengthy interval of time. The reason is because these acts, through a tendency to the external work, are connected, and coalesce into one; but this connection can no longer endure after some interval of time, as is clear.

But what is to be judged a LENGTHY TIME cannot be precisely indicated; for, according to the nature of the thing and the vehemence of the passion, acts of the will endure unequally, so that in some matters they are prolonged little, in others much. But thus St. Alphonsus (V, 38; *H. Ap.*, III, 60): "I think," he says, "that the impulse of one act can with difficulty be prolonged (ordinarily speaking) more than for two, or three days at most. Hence, he who perseveres in an evil will beyond two or three days ought to explain the time; so that thus the number of internal acts concerning external sins may be understood morally."

We said: for the most part; excepted are "acts of the will which proceed from the first depraved purpose and endure in some effect which conduces to perfecting one external sin only; because then, however long a time the depraved will endures, those acts (as ordered to one perverse end) constitute one sin" (V, 40; *H. Ap.*, III, 61).

From this rule it is inferred: 1. "If someone proposes to kill a man, and for this reason prepares arms, takes the road, and kills the enemy, he commits one sin, although for many days he has sought him and has repeated the will several times. Thus the Doctors commonly with St. Thomas (2 Sent., d. 42, q. 1, a. 1). 2. If someone resolves not to restore another's thing, and always remains in the same will (even for a year), he commits one sin; because in that retention never retracted the first will virtually remains ... Yet it must be adverted that if a thief is rendered impotent to restore, and then, having become able, with opportunity given, does not restore, he commits a new sin. The reason is because in that case, through that time of impotence, the will of not restoring does not persevere in effect" (V, 40).

RULE 3. EXTERNAL acts: a) are morally interrupted, if they are complete in themselves, or if the agent intends to rest in them; b) on the contrary, they are not interrupted, but coalesce into one, if they are ordered to the consummation of the same sin, or proceed from the same impulse of concupiscence, or from the same affection of the will (V, 41; *H. Ap.*, III, 62).

I. These acts therefore ARE INTERRUPTED: 1. When they are complete IN THEMSELVES, that is, consummated in their own species, so that they cannot be ordered to another sin of the same species. Wherefore he commits two sins who twice pollutes himself, twice fornicates with the same woman, twice communicates unworthily, etc., even if he perpetrates these crimes within a brief space of time. They are interrupted 2. when the agent intends to rest in them, that is, if they are not subordinated to some completed principal act: say, if someone has several touches, without intention of copula; or if he strikes several times, without intention of killing; or if he several times steals parts from a heap, without intention of carrying off the whole heap; because then each act has its completed malice. Likewise, if someone having kisses, touches, etc., did not will copula from the beginning, but afterwards, on account of increased lust, perfected copula, it is not enough if he confesses only the copula; for then all the acts ought to be explained as distinct sins, because, since one rests in them, each act has in itself its own consummated malice. Thus commonly the Doctors. And the same must be said of him who had the mind only of wounding an enemy, and then, inflamed by anger, killed him: he commits two sins (V, 43).

II. But external acts ARE UNITED: 1. If they are ordered to the consummation of the same sin. Hence, if someone, for consummating copula, sends before acts, kisses, and speeches, it suffices if he confesses only the obtained copula. And probably the same must be said of touches immediately following, because they are very likely applied as the complement of the obtained copula (V, 41, fin.). Yet there is excepted the case if, even while the physically same purpose remains, so great an interval of time intervenes that, according to common estimation, the acts can no longer be called concatenated, that is, so that the preceding act is no longer the proximate disposition to the following act, or its quasi-beginning, although it tends remotely to it.

From this it is inferred: a) He who, from the intention of stealing a heap of wheat, which he cannot carry off all at one time, by repeated times, on the same night, steals parts of the same heap, commits one sin. But he who, from the same intention, steals parts on several occasions morally interrupted (that is, distant from one another by such an interval that one act cannot be called the continuation of the preceding other), sins as many times as he returns to stealing.⁹⁸ b) Similarly, a young man who, from the intention of fornicating, meets a girl with longer spaces interposed, and gradually, through acts less libidinous, induces her to fornication, commits not one, but several sins; because those external acts are no longer morally united, since they were not the proximate disposition to the fornication which afterwards followed, or its quasi-beginning.

2. If they proceed from the same impulse of concupiscence, or from the same affection of the will; say, if someone from the same impulse strikes an enemy several times, dishonestly touches himself several times, blasphemes the same Saint or several holy days several times, several times in the same matter insults someone, or detracts from him (V, 41). But this, as has already been said, does not hold for those sins of work which are complete in themselves: for these cannot coalesce into one.

329. IT IS ASKED. Whether the MEANS employed for sinning must be explained in confession as numerically distinct, if the sin afterwards was not consummated?

Resp. Affirmatively. For then those means are no longer united, and, even if indifferent, they are informed by the internal malice, and therefore must be explained as external sins, or works begun (V, 42; *H. Ap.*, III, 62).

Whence: 1. If these means were indifferent, as to take a road, to carry a ladder for theft, etc., it must be explained in general whether any means of this kind were employed, and how many times with moral interruption. 2. If the means were evil in themselves, as kisses, touches, speeches for seducing a girl, they must be declared in species, at least by reason of scandal, by which both the charity owed to the neighbor is violated, and the virtue which those means induce one to wound.⁹⁹

§ 2. On the Diversity of Total Objects

It must be noted beforehand. The total or adequate object is called that which morally constitutes something one and integral in itself, so that it is neither part nor complement of another; which so terminates one act that it divides it morally into several. Wherefore it must be observed that some objects, physically distinct, can coalesce into one moral

⁹⁸V, 44; *Conf. dir.*, IV, 11, fin.; cf. 2 *El. q. ref.*, n. 6, according to which *H. Ap.*, III, 63 is to be corrected.

⁹⁹From these things (as from the things said above in application of the 3rd rule, II) it is manifest how St. Alphonsus speaks more accurately than some modern authors: for these, as Noldin, here do not sufficiently distinguish between means as such and means concatenated with the consummated work.

object; others cannot. Thus diverse things estimable by price, as sheep, oxen, houses, etc., of the same owner, coalesce into one good of fortune. On the contrary, the lives of several men, whether of body or of soul, cannot coalesce into one; nor the honors or reputations of several men, or temporal goods, unless perhaps these last are possessed by common ownership (Kon., n. 226). In this matter common estimation has very great force.

330. PRINCIPLE. There are as many sins numerically distinct as there are total objects, or objects morally diverse. Thus St. Alphonsus (V, 45; VII, 28; *H. Ap.*, III, 64), with Tournely, Salmant., Croix, D'Annibale (I, n. 286), and others.

This rule is indeed not admitted by some for those cases where those several objects are reached by one external act, for example, if someone by one detraction wounds the reputation of several persons, or by one blow kills several. The reason alleged by them is that a multiple total object multiplies only the malice of the act, and that malices are not to be confessed. But the second opinion, which can be called the more common, teaches that, even in this case, diversity of total objects well constitutes sins diverse in number. The reason: just as one act regarding several objects diverse in species includes several sins diverse in species, to be explained in confession, so an act regarding several objects includes several sins diverse in number. For a sinful act is a movement or tendency of the will into its object as into its term; whence it follows that, if the object is total, the act also is totally terminated or individuated as many times as there are total objects. Besides, there ought to be as many sins as there are morally distinct rights wounded. This is clear by an example admitted by all: "if a married man has copula with a married woman, no one denies that he commits a double injustice: one, because he violates the right of his own wife; the other, because he cooperates so that she violates the right of her husband. Therefore, by the same single act, there can well be several sins diverse in number against the same virtue."¹⁰⁰

331. From these things you will resolve: I. He commits several sins:

332. Who by one shot of a gun kills several men; or by one detraction defames many members of one family; or by one speech is a scandal to several.

333. Who, by one act, commits theft against several persons: but this is not understood if he steals the goods of a monastery or chapter, because those goods belong to the community, but not to the individuals.

334. Who, by one act of the will, proposes for several days to omit the Office or fasting; or wishes evil to several persons; or wishes (that is, efficaciously desires) to approach several women, or several times the same woman.

II. He commits one sin:

1. Who denies several articles of faith; for since there is one formal (and total) object of faith, namely the veracity of God revealing, he who denies one article is just as much an unbeliever as he who denies all.

2. Likewise, probably he commits one sin who, by the same act, blasphemes against the twelve Apostles; because the college of the Apostles is one total object, and besides, all blasphemies against the Saints take their malice from one relation to God, or from one congregation of Saints.

3. Similarly, he who desires several evils for an enemy, for example, infamy, death, etc., but apprehends them under one aspect of evil, namely as means to his destruction, probably commits only one sin, which is sufficiently declared by these words: I desired grave evil for my neighbor. But he who efficaciously desired for his enemy diverse evils, specifically and in particular considered, certainly ought to confess all those things distinctly, because they are diverse sins (V, 46, 50; *H. Ap.*, III, 64, 65).

4. Questions. QUAER. 1. Whether he commits diverse sins who detracts from someone IN SEVERAL MATTERS, or affects him with diverse contumelies?

Resp. More probably he commits several sins. The reason is because diverse rights to reputation or honor, which belong to the other, are wounded; for by the fact that someone has been defamed in one crime, he is not therefore defamed in another.

"Yet here it must well be adverted that little women and common people, who while quarreling together from the same impulse load each other with diverse contumelies, commit one sin (and this light). The reason: because, according to common estimation, these do not wound reputation and honor, since, on the one hand, insults among persons of this kind are not apprehended as grave; and on the other hand, those hearing give no faith to them, and therefore such quarrelers for the most part are excused from mortal sin, unless perhaps they reproach the adversary concerning some particular fact" (V, 48).

¹⁰⁰There are not lacking some, for example, Lehmkuhl (I, n. 352), who do not remember even by a word the opinion defended by St. Alphonsus. We wish it to be noted besides that Lugo (whose footsteps Lehmkuhl follows) concedes that it is not without difficulty to deny universally that malices are multiplied on account of order to several objects (cf. Gaude, vol. II, p. 741).

QUAER. 2. Whether he who detracts from someone BEFORE SEVERAL PERSONS commits several sins?

Resp. Probably he commits only one sin of detraction. "The reason is because to detract before several persons is only an aggravating circumstance, since the right to reputation is one among all, not multiple." Nevertheless easily, in the case, there will be scandal, by reason of which he commits as many sins as there are persons to whom the detraction is a scandal (V, 49).

QUAER. 3. Whether a priest who, in mortal sin, successively absolves SEVERAL persons or ministers the sacred Eucharist to SEVERAL persons commits several sacrileges?

Resp. to the first. Some deny it, because formally he inflicts one irreverence upon God; as he who steals several sacred vessels commits one sacrilege. "But more truly Concina, Croix, and others teach that he commits as many sacrileges as he imparts absolutions, because each absolution is an individual sacrament."

Resp. to the second. A priest who, in mortal sin, ministers the Eucharist successively to several persons more probably commits only one sacrilege, because there is one administration, and therefore one banquet (V, 50, q. 6).

Note. In practice it must be said that per se a penitent ought not to be vexed with questions concerning the total object, because, as the learned D'Annibale says, only the conscience of those sinning numbers sins, and it everywhere ignores subtle and exquisite things. Yet per accidens, for example, for rightly forming the judgment of the confessor, questioning and confession are urgent.

Chapter III

On the Gravity of Sins

St. Thomas, 1.2, q. 72, a. 5; q. 88-89; *de Malo*, VII, a. 1, 2; *Contra Gentes*, I, 3, c. 143; *Lib. Sent.*, II, D. 42, q. 1, a. 3; St. Alphonsus, V, n. 1; ed. G., II, n. 705; III, 132: "On the abuse of speaking evil of the dead"; ed. G., II, p. 456; Aertnys, I, 1, n. 228; Lehmkuhl, I, 334; Scheeben, *Dogmatik*, II, 528 seqq.; Koch, *Lehrb. der Moralth.*, 243; Gopfert, I, 224; controversy with Schell apud Commer; Mausbach, *Kath. Mor.*, p. 214; Manning, *Sin and its consequences*.

The gravity of sin is the measure of malice, or deformity, which the act has with right reason, or (what is the same) the greater or lesser offense of God contained in sin.

333. PRINCIPLES. I. Not all sins are of the same gravity, but some are graver than others. This is of faith against Jovinian; and is proved: 1. From Scripture, for example, from the words of the Lord to Pilate: He who handed me over to thee has the greater sin (John 19:11). 2. From reason. For sin is a disorder of a human act. But such a disorder can be greater or lesser, as is luminously clear from the things said concerning the morality of human acts. Therefore.

II. Some sins are mortal, others venial. This is of faith against Calvin and Baius. It is proved: 1. From Scripture, which declares some sins worthy of death: Those who do such things are worthy of death (Rom. 1:32). Likewise the classic text 1 Cor. III, 8. Then (Matt. 7:3) some sins are likened to a beam, others to a mote: but a mote is a light thing, a beam something grave. 2. From the decrees of the Church, for example, from the condemnation of the 20th proposition of Baius, asserting: "There is no sin venial from its nature, but every sin merits eternal punishment." Likewise from Trent (Sess. XIV, c. 5), which teaches that all mortal sins which occur to memory are to be confessed; not likewise venial sins.

334. Questions. QUAER. 1. Whence must the diverse gravity of sins be taken?

Resp. 1. It must be taken primarily on the part of the object, or from the dignity of the virtues to which sins are opposed. Thus, for example, blasphemy, from its genus, is a greater sin than theft; because it is opposed to a more excellent virtue, namely religion (1.2, q. 73, a. 4).

2. It must be taken secondarily from the circumstances, for example, from the dignity of the person, from the duration or intensity of the act, from the effects, but especially from the greater or lesser grade of knowledge, advertence, and consent.

Hence, other things being equal: graver are a man's sins committed against God than against himself and neighbor; sins of commission than of omission; sins of mouth and work than of heart; sins of malice than sins of infirmity, and these graver than sins of ignorance; sins of those who excel in knowledge, virtue, dignity, etc. (St. Alph., *Selva*, P. I, c. 4).

QUAER. 2. Whether a sin lighter from the object can, by reason of a circumstance, exceed the gravity of a sin of a superior species?

Resp. Affirmatively, more probably with St. Thomas and others: “because although, regularly, the graver sin is that which is opposed to the more perfect virtue, nevertheless, since the gravity of a sin of a superior species is finite, therefore, even if physically it cannot be exceeded by the malice of a sin of an inferior species, it can indeed be exceeded morally.” Thus, for example, gold is more precious than silver and lead. Yet this does not prevent a great heap, or mountain, of silver from being more precious than a small mass of gold. “And therefore the aforesaid rule of measuring the gravity of sin from opposition to the superior virtue runs only when sins are the greatest against each virtue, but not when the comparison is made of the greatest sin to the least” (V, 34; *H. Ap.*, III, 56).

Hence morally sodomy and bestiality are graver sins than perjury, as St. Thomas teaches with the Salmanticenses. Within the ambit of the same virtue, sins against a prohibiting law are also physically graver. In general, a sin is graver the nobler the person against whom it is directed; whence sacrilegious Communion, according to St. Thomas, is not the gravest sin of all. Moreover, a sin is graver the more important the good which is wounded, for example, in sins against charity owed to the neighbor (Lehmke, I at the end).

In sin also the aspect of malice and the aspect of harm which it brings must be distinguished. From this St. Thomas observes (1.2, q. 73, a. 5): spiritual sins are, according to themselves, greater than carnal sins; but carnal sins are of the greatest adherence. Wherefore, the greatest cautions must always be employed, so that even the very beginnings from which that most dangerous pest can arise may be strongly resisted.

With these things premised, the matter must be discussed: 1. concerning mortal sin; 2. concerning venial.

Article I

On Mortal Sin

335. DEFINITION. Mortal sin is a deliberate transgression of a law gravely obliging, or: an OFFENSE, that is, an injury OF GOD, which, on account of its gravity, dissolves grace and friendship with God, and merits eternal punishment (see n. 339). “It is called mortal, because it removes the principle of spiritual life, namely habitual grace, and brings death to the soul” (V, 51; cf. *Inst. Cat.*, Introd.).

DIVISION. Mortal sin is such either from its whole genus, or from its genus simply, or per accidens.

1. It is mortal from its whole genus, when by reason of the object it is always grave, because the whole notion of offense is detected both in the least and in the greatest quantity of matter.

Of this kind are hatred of God, formal heresy, perjury, blasphemy, simony by divine right, direct violation of the sacramental seal, or breaking the fast before Communion, venereal acts outside marriage, etc. These never admit smallness of matter: because they always contain grave disorder by reason of the object (V, 56).

2. It is mortal from its genus (simply or not from the whole), when by reason of the object it can be mortal or venial according to the quantity of matter; but the sin is not mortal unless it reaches a certain quantity of matter.

Of this kind are thefts and other sins against justice; for they admit smallness of matter (V, 54-56; *H. Ap.*, III, 67).

3. It is mortal per accidens (venial per se), if by reason of the object, or considering the nature of the thing, it is indeed light, but has been made grave

by reason of some special circumstance which intervenes in the act, for example, by reason of error, scandal, etc., as will be explained below (n. 342, q. 3).

336. PRINCIPLE. For mortal sin three things are necessarily required, namely grave matter, full advertence of the intellect, and perfect consent of the will. The reason is because, human frailty being considered, it does not seem to befit divine goodness to punish man with eternal torments on account of a transgression in matter altogether light, or on account of the violation of an obligation not fully and perfectly voluntary (V, 53).

There is required 1. Grave matter, namely matter which is such either according to itself, or by reason of some circumstance, for example, if the end of the legislator is of great moment, to which the law contributes very much, or if grave scandal must be avoided, etc.

2. Full advertence to the grave obligation, and therefore in the definition of mortal sin there is added deliberate, that is, perfect in the line of act.

For the intellect can advert in a twofold way: either fully, when someone, fully master of himself, perfectly discerns the matter, having the mind free; or half-fully, when he discerns the matter in an imperfect way, as happens in half-wakefulness, in half-drunkenness, in distraction, in most vehement passion. Now, in order that a sin be mortal, full advertence is always required either to the malice of the act, or to the danger of sinning, or to the obligation of averting such a danger; and this either actually, while the action is posited, or in the beginning when the cause was freely posited, from which afterwards the evil act followed (*Conf. dir.*, III). Cf. n. 318.

3. Perfect consent of the will. Consent is called perfect when the act of the will embracing evil is wholly free and deliberate, or when it follows wholly full advertence of the intellect; but imperfect, if it was sudden, without sufficient deliberation, or if it follows half-full advertence; or finally, if only the inferior part of the soul consents, with tepid resistance of the will (cf. n. 322, q. 1).

Now, for mortal sin, which is full and consummated fault, imperfect consent does not suffice, but full and perfect consent is required, in which there is the whole notion of the voluntary. This is common and certain, says St. Alphonsus (V, 5), among the Doctors even of the more rigid opinion. Nevertheless it can happen that the will, with only indirect consent, commits mortal sin, if, namely, with the effect foreseen, it wills the cause, as was said above (*H. Ap.*, III, 40). Cf. n. 319, 321.

Note. Virtual and confused advertence suffices, provided it is full; nor is it required that it be distinct. It is distinct when someone discerns the quality or quantity of the sin; concerning virtual we spoke n. 317; it will be confused when, by an act of the intellect fully conscious of itself, he doubts or suspects the malice of the action (V, 3). This suffices for perfect consent and for mortal sin, as is clear from the things said n. 36. Therefore neither is it required, as certain neoterics have thought (but afterwards they taught this less openly), that mortal sin must be committed from rebellion against God, from formal insurrection against God, from hatred of God and with a certain pertinacity. See Commer, *Herrmann Schell*, p. 118.

337. Questions. QUAER. 1. How can the objective gravity of sins, or gravity BY REASON OF MATTER, be known?

Resp. The objective gravity of sins is known:

I. From authority: 1. From Sacred Letters. "Which sins are light, which grave, must be weighed not by human, but by divine judgment," says St. Augustine (*Ench.*, c. 78). Therefore those sins must be considered mortal which in Sacred Letters are said to be worthy of death, or to exclude from the kingdom of heaven, or hateful to God, etc. For words of this kind signify that the deformity of the action is certainly grave. 2. From the definitions of Supreme Pontiffs and decrees of General Councils; if, namely, in them some sin is declared mortal, or is found affected by grave penalties (*Diss. proleg. Zacch.*, P. II, c. 3 and 4). 3. From the doctrine of the holy Fathers, Doctors of the Church, and distinguished theologians. Those things which by them unanimously, or almost unanimously, are held as mortal, must also by us be considered as such. For not to assent to them savors of temerity, since their consensus in a moral matter is an indication of truth (Kon., n. 202).

II. From the very matter of sin or from natural reason. Thus generally GRAVE are judged: all sins which are directly against God or some perfection of his; sins which tend to grave prejudice of the human race, as are the various species of lust; sins by which the neighbor is gravely harmed in goods of life, fortune, reputation, etc.; sins which are gravely repugnant to an end of great moment intended by law, as the omission of fasting, Mass, annual confession, Paschal Communion, etc.

For the rest, the limits between mortal and venial sin often, indeed very often, can in no way be determined, as is clear from innumerable controversies of the Doctors. But where strict doubt perseveres, one must stand for the milder part and the faithful person must prudently be instructed. "For a mortal sin is not to be built up, unless it is certainly clear concerning it" (I, 89; V, 52, *Bene hic*).¹⁰¹

QUAER. 2. Whether he sins gravely who knows his action is EVIL, but is ignorant of its GRAVITY, or does not attend to it?

It is noted beforehand. The question has force concerning those things which are not evidently grave, nor evidently light: for concerning evident things it cannot be supposed that the one operating, who adverts that the matter is evil, does not attend, not even confusedly, to gravity or lightness; because, at least implicitly and exercisedly, he sufficiently apprehends

¹⁰¹In the responsive letter "on cursing the dead," the Holy Doctor speaks thus: "But in order that some action be affirmed absolutely to be mortal sin, probable opinion does not suffice, nor even the more probable" (I. III, n. 132). Unless, however, the opposite is certainly more probable, as is clear from I. 1, n. 54, 62, 83, and 88. For this letter was written in the year 1758, when Alphonsus had not yet perfected his system. Note of Fr. Gaude, *Theol. mor.*, I, p. 456. As to the office of the Confessor, cf. VI, 604, 605.

one or the other. Likewise the question is not concerning a man who positively doubts concerning the gravity of his action. Let the conclusion given above, n. 36, be read again.

Resp. It is disputed; but to St. Alphonsus sufficiently probable is the opinion of those who say that a man of this kind sins, per se, only venially; because in order to sin mortally, it is required that someone consent directly or indirectly to a mortal sin; but he who in no way thinks of, or suspects, mortal sin cannot by any reason be said to consent to mortal sin (I, 23; cf. *Istruz.*, I, 13).

We said PER SE, that is, supposing: 1. that he does not apprehend, at least confusedly, the danger of sinning gravely or the obligation of investigating the matter; 2. that the agent is not of lax conscience; otherwise, at least indirectly, he must be judged to consent to mortal sin (cf. n. 318, 2).

QUAER. 3. How must one judge IN DOUBT concerning perfect consent?

Resp. One must judge from things commonly happening, as we have already said (n. 50).

1. If the one doubting is of timorous conscience and is not accustomed deliberately to consent to grave sin, it can reasonably, indeed morally certainly, be believed that he has not consented. For he who habitually adheres to God, and greatly fears lest he be deprived of divine grace, if it sometimes happens that he is turned away from him, must inflict great force upon himself in order that he despise the remorse of conscience and deliberately throw himself into sin: but he cannot do this unless he certainly adverts to the evil which he embraces.

But for presuming that full consent was not present in a pious man, these following CONJECTURES are especially useful: "a) If such a one has had a serious and often repeated purpose of never sinning mortally, and does not know that he has certainly revoked it. b) If, when he adverts the evil, he is terrified and immediately repels the temptation, and at once doubts whether he consented. c) If he remembers that he proceeded timidly (that is, if there was present only torpor, yawning, hesitation of the will). d) If he does not know whether he did or thought something in wakefulness or sleep; for if he had been awake, he would have adverted it and would know it" (VI, 476). e) Finally, if he could easily have proceeded to the external act, and nevertheless did not proceed (Reuter, *Neo-conf.*, 244, 265).

2. If the one doubting is accustomed easily to fall into mortal sins (or is of lax conscience), the opposite must be judged concerning him; "because in doubt he is presumed to have consented. For if he had resisted, he would indeed remember that effort which he inflicted upon himself to repel the temptation."
3. Whether mortal sins which remain plainly doubtful from this must be declared in confession will be weighed below in the treatise on Penance (n. 1695 seq.).

QUAER. 4. Whether he sins gravely who DELIBERATES concerning furnishing consent to a gravely illicit thing, if finally he does not consent?

Resp. The solution of the question depends on the quality of the deliberation. If the deliberation is only a certain hesitation, or omission of resistance, proceeding from torpor, sloth, or negligence, it does not exceed venial sin. But if the deliberation is full and formal, by which, namely, someone weighs whether he wishes to perpetrate a gravely evil thing or not, it is a mortal sin. For thus hesitating, after the manner of Pilate, he values God with the creature; wherefore he commits a sin of the same species and gravity as that concerning which he deliberates (Croix, V, 226-229).

For promoting tranquility of conscience in doubts concerning consent, a simple and serious effort to elicit an act of charity has much force; it helps very much and can by no means harm.

338. Note. By reason of peculiar malice, there are also distinguished:

339. Sins AGAINST THE HOLY SPIRIT. Six are numbered: a) presumption, b) despair, c) attack against acknowledged truth, d) envy of fraternal grace, e) obstinacy, f) final impenitence. They are called sins against the Holy Spirit because, through them, that is cast away by which the Holy Spirit is accustomed to remove man from sin: whence they are most grave, and are remitted only with the greatest difficulty (St. Thom., 2.2, q. 14, a. 2).
340. Sins CRYING TO HEAVEN. There are four, namely: a) homicide, b) sodomy, c) oppression of the poor, d) defrauding the wages of laborers. They are called crying, because they most vehemently provoke divine vengeance and merit most grave punishments (Voit, *de Pecc.*, n. 316-317).
341. Irremissible sins, concerning which see Matt. XII, 31; Mark III, 28; Luke XII, 10; 2 Pet. II, 20; Heb. VI, 4; X, 26. They are so called not with respect to God, but with respect to man, who rejects the mercy of God.

Scholium

On the Effects of Mortal Sin

339. The chief effects are the following:

1. GRAVE INJURY OF GOD. Any mortal sin is an offense of God, not effectively, because God is incapable of harm, but affectively; and it is a true injury and contempt of the divine Majesty, which is placed after the creature (*H. Ap.*, III, n. 20). For mortal sin is aversion from God and conversion to the creature.

But this offense of God involves so great an evil in itself that it cannot be conceived by any created intellect: for objectively and extrinsically, or on the part of the one offended, it is truly infinite, because “injury is in the one injured as honor is in the one honoring” (St. Thom., III, q. 2, a. 2, ad 2).

2. PRIVATION OF SANCTIFYING GRACE, and with this privation, the loss of all merits, and inability for acquiring new merits.
3. A MOST FOUL STAIN OF THE SOUL. To the point St. Thomas says (1.2, q. 86, a. 1 and 2): “The soul of man,” he says, “has a double brightness: one from the shining of the natural light of reason, by which it is directed in its acts, and another from the divine light of wisdom and grace, by which man is perfected for acting well. But when man sins, he adheres to certain things against the light of reason and of the divine law, and thus he is stained ...; the stain of the soul is so called metaphorically. This stain remains in the soul even when the act of sin passes away, insofar as it imports a defect of brightness from recession from the light of reason and of the divine law ... but after he returns to the light, which is done through grace, then the stain ceases.”
4. GUILT-BOUNDNESS OF FAULT. This prior guilt-boundness, which differs from stain only according to the mode of signifying, properly says a state of culpability, which includes two things; namely: a) privation of the praiseworthy or of praise, which is owed both to the person who operates according to the order of reason and of the eternal law, and to the act which agrees with these rules ...; b) the obligation of repairing the injury inflicted upon God, through deviation from the aforesaid order of reason and of the eternal law, and therefore through contempt of God himself (1.2, q. 21, a. 2).
5. GUILT-BOUNDNESS OF PUNISHMENT, that is, the obligation or necessity of paying the punishment due to sin. As St. Thomas rightly observes, those things which are contained under some order are in a certain way one, in order to the principle of the order. Wherefore whatever rises against the order ought to be depressed by that order and the prince of the order. Therefore, since sin perverts the THREEFOLD order of reason, of the universe, and of God, hence it incurs guilt-boundness of a threefold punishment, namely remorse of conscience, vengeance of creatures (for example, through fire), and privation of God (1.2, q. 87, a. 1).
6. PUNISHMENT ITSELF. Punishment is usually defined: the privation of a due good, against the will of him who is deprived, on account of fault. Wherefore two things are to be noted: one concerning its gravity; the other concerning its bitterness.

As to gravity, it depends on the magnitude of the good of which someone is deprived. Whence the gravest of all punishments is the privation of God, who is the highest good. The second place is held by the privation of supernatural goods. From this punishment it easily results that one sin becomes per accidens the punishment of another, insofar as the sinner, despoiled of his supernatural habits and more deprived of actual graces, is drawn on to other sins, as if by the proper weight of his perverse nature. In the third place comes the privation of natural goods. By this punishment also, at least partly, the sinner is chastised; for his nature, wounded by original sin with the fourfold wound of ignorance, malice, infirmity, and concupiscence, is affected by a new wounding. St. Thomas well declares this (1.2, q. 83, a. 3).

But as to the bitterness of punishment, it must be said that it arises from contrariety of the will. And hence it often happens that in this life the greatest punishment is felt least, and the least is felt most; for “the fascination of trifling obscures goods” (*Wis.* IV, 12). But after death, punishment torments according to its intrinsic gravity. For man, once having entered into the house of his eternity, at last judges rightly concerning those divine goods, to the possession and enjoyment of which he was born. Whence the more excellent the goods are, the more bitterly he grieves concerning their privation. And since God is infinite good, St. Alphonsus does not doubt (*Praep. ad mortem*, cons. 26, punct. 3) to assert that the punishment of the damned is plainly incomprehensible and in a certain way infinite. Cf. Lessius, *de Perfectionibus moribusque divinis*, I, XIII, c. 12, 13, 28 seqq.

Article II

On Venial Sin

340. DEFINITION. Venial sin is a light transgression of the divine law, lessening the fervor of charity, and rendering man worthy of temporal punishment (V, 51; *H. Ap.*, III, 23).

It is called venial because it does not take away the principle of pardon, which is grace, and therefore easily obtains pardon; but not as if it were a thing light in itself or to be little esteemed. It is enough to understand, says St. Alphonsus, that it is an offense of God, so that it be avoided more than any other evil whatsoever (*Instr. cat.*, Introd., n. 9).

DIVISION. Venial sins are such either per se, or per accidens.

1. Venial sins per se, or from their genus, are those which, by reason of the object, are always venial, so that they never become mortal unless they are drawn outside their proper species on account of some supervening circumstance. Thus a lie always remains venial, unless by reason of harm or another circumstance it passes to another species.

Of this kind are, generally, sins committed against one's own good, as useless and vain concupiscence, vain delight of the senses, prodigality, curiosity, superfluity of clothing, excess in food, in drink, in sleep, in laughter, in fear, in sadness, in appetite for money, praise, and several other things which will be enumerated below when we treat of capital sins.

2. Venial sins per accidens are those which indeed from their genus are mortal, but which, on account of smallness of matter or another circumstance, become light, as will be explained below (n. 342, quaer. 2).
3. PRINCIPLE. For venial sin three things are required: an obligation imposed by some precept, advertence at least half-full to the light malice of the transgression, and some consent, at least imperfect. That these three are required is clear; for, these being removed, either there would be a transgression of no law, or there would be no knowledge and willing of evil, that is, no deformed human act would be present, and consequently no sin properly so called.

From these things, venial sin is clearly discerned from imperfection, in which not all things intervene which are required for constituting formal sin. Namely, IMPERFECTION is usually taken in a twofold sense. 1. In one sense, imperfection, with respect to law, is called an action or omission repugnant not indeed to some positive precept, but to mere counsel; to executing which someone is incited either through the impulse of grace, or through the dictate of reason, or only through the directive will of Superiors. Imperfection, taken in this sense, is not per se sin; for where there is no precept, there is no transgression of a precept. We said per se, because often imperfections of this sort, on account of various circumstances, are not free from fault, for example, on account of vicious love, curiosity, sensuality, sloth, etc. 2. In the other sense, imperfection, by reason of act, is called a transgression of precept wholly indeliberate and involuntary, both in itself and in the cause, such as wholly involuntary distractions during prayer, involuntary excess in laughter, in sadness, in indignation, in joking, in telling stories. In this sense, imperfection is free from all fault.¹⁰²

342. Questions. QUAER. 1. Whence must the DIFFERENCE between mortal sin and venial sin be taken?

Resp. The Doctors more commonly teach that it must be taken from the essentially diverse mode by which the will converts itself to the creature in each sin. Namely, by sinning mortally, the will converts itself to the creature totally, as if the creature were its ultimate end, and therefore it averts itself totally from God, and at least implicitly contemns his friendship. But by sinning venially, the will, while preserving its habitual tendency toward its ultimate end, that is, toward God, pursues the creature only by an undue and inordinate love: wherefore it incurs only temporal punishment, which corresponds to the inordinate conversion to the creature.¹⁰³

And in this sense St. Thomas seems to speak when he says that venial sin is not against, but beside the law; understand that it is not against the end of the law, which is charity, but is against the order of the law to be observed, and consequently is a true transgression of law, as is clear from the definition of sin (cf. V, 11).

QUAER. 2. In how many ways does a sin, mortal from its genus, become VENIAL?

Resp. In three ways: a) from smallness of matter; b) from imperfection of knowledge, that is, either from an invincibly erroneous conscience, by which someone judges that something is venial which of itself is mortal, or from half-full advertence; c) from imperfection of consent (cf. n. 336).

QUAER. 3. From how many causes can a sin, venial from its genus, become MORTAL?

¹⁰²Cf. Croix, I. V, 212; Lugo, disp. 16, n. 102.

¹⁰³Cf. St. Thomas, 1.2, q. 72, a. 5, and q. 88, a. 1; Suarez, *de Vitiis et Pecc.*, disp. 2, sect. 1.

Resp. From six causes, namely:

1. By reason of error, when someone in reality wills or operates something which of itself is a light sin, but seriously thinks or doubts, from erroneous conscience, that it is a grave sin (cf. n. 22; 337, q. 2).
2. By reason of an adjoined end, when, namely, to an act per se venially evil there is joined a gravely sinful end: as if someone lies lightly in order to seduce a girl (n. 306, 307).
3. By reason of excessive affection, when, namely, in a lightly evil thing the ultimate end is constituted, so that the man badly disposed at least by an internal act sets it before God, and knowingly and actually is prepared gravely to offend God rather than renounce his vain delight.
4. By reason of formal contempt of the law, or of the legislator: thus “it is mortal to do or omit something from contempt of a just human law; likewise, from contempt of God prescribing or even counseling, which for that reason contains a tacit blasphemy, as if God prescribed or counseled useless things, etc.” (V, 61, 3). Cf. things said n. 179, 3.
5. By reason of scandal, when grave scandal of the little ones proceeds from venial fault: as if from venially evil words which parents bring forth, children are gravely scandalized; or if children, through light disobedience, knowingly provoke parents to blasphemies.
6. By reason of danger, when, from a light fault, there arises a proximate or probable danger of sinning gravely: as if someone talks idly with a woman, having sufficiently learned by experience that from conversations of this kind he has often sinned mortally (I, 22; V, 59-63; *H. Ap.*, III, 68).
7. From the things said you will resolve: 1. Several venial sins cannot constitute one mortal sin by reason of multiplication; because since mortal and venial differ essentially between themselves, the nature of one cannot become the nature of the other. Whence St. Thomas (1.2, q. 88, a. 4): “All the venial sins of the world cannot have so great a guilt-boundness as one mortal sin.” And St. Alphonsus: “It is better to permit innumerable venial sins than one mortal sin” (III, 130).

Nevertheless they can reach mortal sin by reason of matter coalescing. “It must be adverted,” says St. Alphonsus, “that small matters repeated then constitute grave matter when they coalesce of themselves, or at least morally in themselves; as are small thefts, small omissions in the office, in Mass, or small eatings repeated on the same fast day” (V, 56, 2; *H. Ap.*, III, 67).

2. Any Christian who wishes to avoid mortal sins alone, without caring anything about omitting venial sins, does not sin mortally, speaking per se; the reason is because a purpose of this kind conduces to mortal sin only remotely. But it is otherwise if contempt is present, or the proximate danger of falling into mortal sin, respect being had to past experience (IV, 12). As to religious, cf. n. 2154.
3. Someone does not sin gravely by reason of excessive affection from the fact that he is borne very intensively and vehemently into a created thing; but it is required that appreciatively he esteem that object, at least virtually, in such a way that he is actually prepared, on account of it, to transgress a precept obliging under mortal sin. We say actually prepared; because that which he is disposed only habitually to commit is not imputed to him as fault (V, 60).
4. A confessor does not satisfy his office if he has no care to remove the penitent from frequency of venial sins, especially those which are committed with full advertence. The reason is because he who casts aside all care of avoiding venial sins will little by little fall into mortal sins (cf. n. 344, 5).

Scholium

On the Effects of Venial Sin

344. Venial sin produces many effects, and these calamitous ones (*Lancicius, de Fuga pecc. ven.*, l. I). The chief are the following:

1. It offends God. “It does not indeed affect him with grave injury,” says St. Alphonsus, “but nevertheless with some injury. It is not a grave evil, as mortal sin is, but it is a greater evil than all other evils which can happen to creatures” (*Inst. cat.*, Intro., n. 9).
2. It induces guilt-boundness of punishment (per se temporal), to be undergone in this life or in the other. We said per se temporal; for the Angelic Doctor thinks (1.2, q. 87, a. 5, ad 3) that although venial sin, since it does not separate

from God, does not merit eternal punishment, nevertheless it can per accidens, whether by reason of irremissibility, be punished eternally, if it is found in the damned not remitted with respect to fault.

3. It impedes special graces, and renders man unworthy of that peculiar affection of God by which he himself is accustomed to pursue the just, according to that saying (Matt. 7:2): In what measure you have measured, it shall be measured back to you.
4. It lessens the fear of God, and increases tepidity of soul. Nevertheless it does not directly lessen charity or the other infused virtues, but it lessens the fervor of charity.
5. It disposes to mortal sin. This is clear: a) From Eccles. 19:1: He who despises small things will fall little by little. b) From daily practice. Moreover, it disposes both negatively, by diminishing the fervor of divine charity, the horror of sin, the alacrity of faith, and divine grace; and positively, by increasing the inclination of the will to evil, whence it comes about that at last man rushes headlong into mortal sin (*Selva*, P. I, c. 5).

IT IS ASKED. Whether venial sin causes a STAIN in the soul?

St. Thomas responds (1.2, q. 89, a. 1): “Just as in the body there is a twofold brightness, one indeed from the intrinsic disposition of members and color, but the other from exterior clarity supervening: so also in the soul there is a twofold brightness. One indeed habitual, as if intrinsic, but the other actual, as if exterior brilliance. But venial sin indeed impedes actual brightness, yet not habitual brightness ... Whence, properly speaking, venial sin does not cause a stain in the soul. And if somewhere it is said to induce a stain, this is in a certain respect, insofar as it impedes the brightness which is from acts of the virtues.”

Chapter IV

On Internal Sins

St. Alphonsus, V, 12; ed. G., II, p. 720; *H. Ap.*, III, 47; *Vind. Alph.*, P. 2, q. 2; Aertnys, I, n. 236; Lehmkuhl, I, n. 353; *Ami du Cl.*, 1912, p. 1025.

345. Internal sins, as such, are all evil acts elicited by the will and deliberately willed, which are perfected in the mind. Concerning these the Tridentine Synod warns (Sess. XIV, c. 5) “that sometimes they wound the soul more gravely, and are more dangerous than those which are admitted openly.” The reason is because they are more easily perpetrated, are less cared for, and especially in the article of death expose the soul to the danger of damnation (*Inst. cat.*, P. I, c. 6, n. 4).

Internal sins are reduced to a threefold class: 1. to desire and purpose, which regard future time; 2. to joy or complacency, which look to past time; 3. to delectation, which refers itself to present time.

Article I

On Depraved Desires and Purposes

346. DEFINITION. Desire, not insofar as it is a passion, but insofar as it is an affection of the soul, is defined: An act of the rational appetite tending toward an absent good. As it is taken here, that is, as sin, it is an act of the will by which someone deliberately desires to complete an evil work by deed.

DIVISION. Desire, with respect to execution, is said to be: 1. inefficacious (or conditioned), which someone consents to execute if he could; which therefore stands without purpose and is called velleity, for example, if he says: if I could steal the treasure of the church, I would steal it; 2. efficacious (or absolute), if he consents to execute it with foresight, or at least hope, of completing the work, and thus a purpose is elicited, for example, if someone devises means for killing an enemy (V, 15; *H. Ap.*, III, 47). Purpose is the act by which the will determinately wills and resolves to complete the work.

347. PRINCIPLES. I. Any desire, even inefficacious, or purpose, concerning an evil thing or action, is sin. This is clear both from the precept, “Thou shalt not covet,” and from reason, because to seek evil is certainly repugnant to rational nature and to the divine ordination (recall the things said n. 316).

348. II. A depraved desire or purpose includes the same malice and species which are in the desired work. This is clear from Matt. (5:28): He who shall have looked upon a woman to covet her has already committed adultery with her in his heart. The reason is because the internal act of desire has its goodness and malice from the external act as from its object, indeed simply, that is, as it exists concretely (V, 12; *H. Ap.*, III, 48). Cf. n. 312.

Hence: 1. It must be well examined whether he who admitted a depraved desire apprehended all the malices which are in the object, or only adverted to this or that one.

2. A penitent who elicited a desire, even inefficacious, of stealing ought to explain whether it concerned a grave thing. Likewise, he who basely desired a woman ought to say whether she is a blood-relative, or an affine, etc.; because such circumstances (unless they are invincibly unknown by the sinner) add new malice to the sin. Indeed, it is EXPEDIENT in hearing confession to understand whether the desire was efficacious or not, and a true purpose of perpetrating external sin, so that occasions to be fled and remedies to be applied may be better known.

3. Questions. QUAER. 1. Whether he sins gravely who wishes for some gravely evil object under the condition: IF IT WERE LAWFUL?

Resp. Regularly negatively, since the condition appended takes away in fact the malice of the work, because then the desire is borne toward an object stripped of malice.

I say regularly, because this is certain:

1. In those things which are forbidden by positive right alone; for example, if someone says: I would eat meat on Friday if the Church had not forbidden it; or: I would wish that today the eating of meat were not prohibited, so that I could feed on it. 2. In those things forbidden by natural right, which in some case and state are lawful: for example, I would kill an enemy if God commanded; I would take a wife, if I were not a priest.

This is also sufficiently probable if the matter concerns those things in which malice cannot be separated from the object, because then also malice is taken away, while the will, by wishing under a condition which it knows cannot be verified, does not truly wish, but rather shows a natural propensity. For the rest, desires of this sort commonly are dangerous, or at least idle.

But to desire that things intrinsically evil be lawful is a grave sin, for it is to wish for the inversion of the order of nature. Likewise, it is a grave sin if the condition appended does not regard the malice of the object, but the punishment or something else; for example, I would fornicate if there were no hell; I would kill an enemy if I were not a priest (V, 13; *H. Ap.*, III, 50).

QUAER. 2. Whether it is lawful to wish temporal evil to a neighbor FOR A GOOD END?

Resp. 1. It is lawful, if the order of charity is preserved, namely so that temporal evil is wished for a greater good. Thus St. Alphonsus (V, 21) with St. Thomas and others commonly.

Hence it is lawful to desire temporal evil for a neighbor: a) on account of the spiritual good of the neighbor himself; b) on account of the common good, whether spiritual or temporal; c) on account of the good even of a third innocent person, provided that it is of greater moment. Thus, for example, it is lawful to wish for the death of a heresiarch, or of a disturber of public peace, on account of the common good and the good of many, according to that saying (Gal. 5:12): Would that they be cut off who trouble you. Likewise, it is lawful to be saddened by the fact that dignities are conferred upon the unworthy; or by the health of him who takes from it an occasion of sinning. Likewise, it is lawful to wish poverty, disease, or some other adversity to a wicked man, so that he may come to his senses. Nevertheless desires of this kind sometimes are not free from danger. Cf. II, 30; *H. Ap.*, III, 63.

Resp. 2. It is not lawful in other cases, where, namely, the good intended does not surpass or at least equal the evil which is wished to the neighbor.

Wherefore it is illicit for a wife to desire the death of her husband because she is treated badly by him; and for a mother to desire the death of a daughter who, on account of deformity or poverty, lacks hope of marrying honorably. That these and similar things are not lawful is clear also from the condemnation of the 13th and 14th propositions made by Innocent XI, of which the former sounds thus: "If you do it with due moderation, you can without mortal sin be saddened about the life of someone, and rejoice about his natural death, ask and desire it with inefficacious affection, not indeed from displeasure with the person, but on account of some temporal advantage"; but the latter: "It is lawful with an absolute desire to desire the death of one's father, not indeed as the evil of the father, but as the good of the one desiring, because, namely, a rich inheritance is going to come to him" (V, 22).¹⁰⁴

¹⁰⁴Cajetan, Oviedo, Mendo, Palaus seem to have taught the 13th proposition, Oviedo the 14th (*Viva, Th. damn. in h. prop.*).

Article II

On Complacency and Joy

350. DEFINITION. Complacency is an act or affection of the will delighting itself in some thing. Joy, in general, is the complacency of the appetite in a good already obtained, or apprehended as such. As it is taken here, it is the deliberate complacency of the will concerning an evil work carried out either by oneself or by others (V, 15).

To this also can be recalled: 1. boasting about a sin committed; 2. sorrow or displeasure concerning an evil not perpetrated, or impossible; 3. sadness concerning a good carried out.

351. PRINCIPLES. I. Joy concerning an evil perpetrated is sin. For such joy includes approval of evil. The same must be said concerning displeasure on account of an evil not perpetrated, for example, on account of a theft omitted.

But sadness concerning a good carried out is not always sin, if, namely, a cause is present which renders the regret honorable, for example, after some vow not sufficiently considered when emitted. But if no cause rendering the regret honorable is present, he would sin venially who was saddened concerning a good act to which he was not bound; for this sadness would be against reason, since the proper object of sadness is an evil thing. But he would sin mortally if he were saddened concerning a good work to which he was bound from a grave obligation (Sanchez, *Decal.*, l. 4, c. 12, n. 2).

352. II. Joy concerning an evil carried out comprehends the whole malice of the work, and all its species. The reason is because joy or complacency in a work already perpetrated necessarily, just as desire also, embraces the sinful act as it exists in itself, namely clothed with its circumstances. Therefore it also assumes the morality of these, not otherwise than a depraved desire.

Hence: 1. He who takes complacency for himself in the remembrance of past sins, and approves them, ought to explain in confession both the object of this complacency and its species-changing circumstances, if any are present. 2. Likewise, “he who boasts about a grave sin truly perpetrated by himself ought to explain in confession also the species of the sin; because then complacency concerning the sin done is commonly added to the boasting, and this takes the same species of sin. But otherwise if the boasting is about a fictitious sin” (V, 26; *H. Ap.*, III, 48).

353. Questions. QUAER. 1. Whether it is lawful to rejoice concerning an EVIL WORK ON ACCOUNT OF A GOOD EFFECT which followed from it?

Resp. 1. If the work is formally evil, namely perpetrated with sin, it is certain among all that it is not lawful to be delighted concerning it.

2. But if it is only materially evil, because it happened without sin, for example, homicide committed in drunkenness, there are not lacking authors who admit that the will can be delighted concerning it, as concerning the cause of a good effect.

But St. Alphonsus (V, 20; *H. Ap.*, III, 52), with many others, says that the following must be held as truer: that such delectation is always illicit; because although the action was not formally sinful, nevertheless it was objectively evil. If someone therefore is delighted not concerning the effect alone, but concerning the evil thing itself, as concerning the cause of a good effect, the direct object of his delectation is an objectively evil thing; and therefore he sins.

Therefore you have among the propositions condemned by Innocent XI the 15th, which sounds thus: “It is lawful for a son to rejoice concerning the parricide of a parent perpetrated by himself in drunkenness, on account of the enormous riches thereafter obtained from inheritance.”¹⁰⁵ Hence they sin at least lightly (Lehmkuhl, I, n. 358), who are delighted concerning the omission of the Hours, or the eating of meat, or the breaking of a fast, even if these occurred from inadvertence or from ignorance (*H. Ap.*, III, 54; cf. *Vind. Alph.*, P. II, q. 2).

QUAER. 2. Whether it is lawful to rejoice concerning THE GOOD EFFECT of an evil work?

Resp. It is lawful, speaking per se; because then the will is not borne into an evil object. We say speaking per se, that is, setting aside the danger of rejoicing concerning the evil work itself; for we are bound to avoid such danger (cf. n. 374).

Hence: 1. It is lawful to be delighted concerning relief following from pollution, whether accidental or voluntary, provided there is absent the danger of delighting oneself concerning the pollution itself, which, always and objectively evil, ought to be displeasing, even if inculpably in sleep, through touches or a base dream, it was had. 2. A son does not sin who rejoices concerning the obtaining of an inheritance on account of homicide; nor a woman who is delighted concerning

¹⁰⁵Salas (P. II, tr. 3, disp. 6, sect. 28, n. 29) seems to be the author of this opinion. That doctrine flows from proposition 13, mentioned n. 349.

gain acquired for herself from dishonest trade; provided that in these or similar cases the cause itself is always held in hatred (V, 20).

QUAER. 3. Whether it is lawful to rejoice or be delighted CONCERNING THE NOT EVIL MODE by which an evil action was carried out?

Resp. It is lawful, per se, because, since the mode of action was not evil in itself, the delectation is not concerning an evil object. Thus, without sin, stories, comedies, wars, homicides, frauds, thefts, quarrels, etc., often delight us (V, 18).

It was said per se, because by reason of danger it can be illicit. Thus those easily come into danger of delighting themselves concerning the evil thing who, for example, frequently and willingly hear certain base deeds, in the narration of which only the ingenious manner by which they were carried out seems to please. For if the discourse were concerning honest actions, even carried out in an ingenious manner, persons of this kind, for the most part, would perceive much less delight (*Praxis*, n. 40).

Note. The things which above (n. 349) were said concerning a licit object of desire can also be said concerning joy and complacency. For concerning the things which it is lawful to desire, concerning these it is likewise lawful to rejoice.

Article III

On Morose Delectation

354. DEFINITION. Delectation, taken generally, is the rest of the appetite in a good possessed, that is, apprehended or had; and it can be in both the sensitive appetite and the intellectual.

Morose delectation (or depraved thought properly so called) contains a double element: the thought by which an act of sin is rendered present, and the complacency of the will, by which it is delighted concerning that act as if it then executed it, yet without the intention of executing it (V, 15).

It is called morose not indeed from a delay of time, since even in one point of time every internal sin can be completed, but on account of the deliberate delay which the will makes in it.

The object of this delectation and of these thoughts is more often something illicit in itself, for example, homicide, fornication, and similar things; it can also be an object prohibited by positive law, for example, the eating of meat on a fast day, provided the will is borne toward it under the aspect of prohibition. For the law, with respect to these things, prohibits only the external action.

It is called depraved thought properly so called, that is, sinful, because the will, when it ought to have resisted it, rests in it. Therefore depraved thought is not to be confused with thought concerning a depraved thing, which thought can be lawful. Cf. *Ami du Cl.*, 1912, p. 1025. See n. 357.

355. PRINCIPLES. I. Morose delectation is sin. For it is repugnant to right reason and to the divine law that someone have as pleasing what displeases God. Hence that saying (Hos. 9:10): They became abominable, like those things which they loved; and (Prov. 15:26): Evil thoughts are an abomination of the Lord.

356. II. Morose delectation takes its theological and moral species from the object which someone renders present to himself through the imagination of fantasy. The reason is because whoever is delighted concerning an act of sin takes that act as object, approves it, and adheres to it by his affection insofar as it is rendered present. Therefore, since morality is specified from the object, according to the grade and species of malice of the object, its delectation also will be evil with the same [malice]. Thus St. Thomas (1.2, q. 74, n. 8) and St. Alphonsus (V, n. 12). See the things said n. 347, 348.

357. Corollaries. 1. Speculatively speaking, it is very probable that morose delectation does not necessarily assume the specific malice of all the circumstances of the object. The reason is because simple delectation does not tend into the object as posited, or to be posited, but rests in it as represented by the intellect. Now, the intellect abstracts from other properties of the object, besides that which moves delectation. Thus, for example, if someone is delighted concerning copula with a married woman, not as married but only as beautiful, he does not commit adultery, since the circumstance of adultery does not move the delectation.

Note. But considering the matter practically, the opposite opinion greatly pleases St. Alphonsus, namely in the case where the delectation concerns some libidinous act with a determinate person. For then, on account of the corruption of human nature, there is a proximate danger of coveting or desiring, at least inefficaciously, the determinate object itself, especially if it is inordinately loved; and therefore these circumstances are to be explained in confession. But it would be otherwise

if, from the nature of the thing, or from past experience, or from the disposition of the person, such a danger is judged not to be proximate (V, 15; *H. Ap.*, III, 48). Cf. n. 1820.

2. It is lawful per se to be delighted concerning the thought or knowledge of an evil thing. We say: per se, that is, excluding depraved affection and danger of delectation concerning the evil thing itself. For knowledge of evil is not per se evil, and therefore can be the object of the will, unless it is prohibited from elsewhere, or illicit.

Therefore the delectation which is had, not concerning the evil work, but concerning speculative or scientific thought of an evil object, can be: either 1. good, if a just cause of thinking is present, for example, on account of study, consultation, etc., with abomination of the object; or 2. venially evil, if it is done from curiosity, etc., with only remote danger; or 3. gravely evil, if, when the matter concerns a gravely evil work, there is present a proximate danger of consenting in the delectation (V, 17; *H. Ap.*, III, 49).

Now, the danger of delighting oneself concerning the evil thing itself must practically be measured: a) from the mode of thinking; b) from the quality of the person thinking; c) from the matter thought about; d) from the cause on account of which it is thought about. Thus, for example, if someone reads a book less honorable, there must be considered: the mode by which he reads, for example, greedily; the quality of the reader, perhaps prone to vengery; the book which is read, perhaps obscene by profession; the cause of reading, namely whether it is sufficient that the probable danger of delectation concerning the evil thing itself be entered upon (Kon., n. 233).

3. It is not lawful for the betrothed and widowed, according to the truer opinion, to have delectation concerning the future or past work of marriage, even with the danger of sensitive delectation excluded. "The reason is because delectation renders the object present to itself; and therefore whenever the present object here and now is evil, since here and now there is absent the condition rendering marriage honorable, every actual delectation concerning it is also evil" (V, 24; *H. Ap.*, III, 51).

"Another thing must be said concerning desire, by which the betrothed man wills future copula; for this is lawful, because, when the will is borne toward a future object, it can desire it under the condition by which the object will be lawful. But because in such desire there is also danger of delectation, therefore the betrothed are very much to be exhorted that they carefully turn away from themselves base thoughts of this kind." Concerning the Married, cf. n. 2111, 2.

358. Practical rules. The confessor, so that he may judge rightly concerning sinful thoughts, should duly attend to the following:
359. Lest he uselessly waste time through questions troublesome to himself and to the penitent, or even dangerous, let him not inquire concerning the species or number of thoughts unless it has first been clear to him concerning consent. Wherefore let him first ask the penitent whether he adverted that thoughts of this kind were sins. But if the penitent responds that he detested them as soon as he knew that they were base, he must be judged altogether immune from sin. If he responds that for some time he indeed had a confused knowledge concerning their malice, but did not attend to it perfectly, he is easily to be excused from grave sin, though not from venial.
360. But if the penitent is not able to free himself from these questions, ordinarily it must be presumed that he did not consent, or at least that full consent, or perfect advertence, was lacking to him, especially if he is of timorous conscience. On the contrary, he who is accustomed to sins, and fears them little, in doubt must be presumed to have consented (Kon., n. 235). Recall the things said n. 337, q. 3.

Chapter V

On Capital Sins

St. Thomas, 1.2, q. 84, a. 2 seqq.; *de Malo*, q. 8 seqq.; St. Alphonsus, V, n. 65; ed. G., II, p. 752; St. Bonaventure, *Breviloq.*, P. III, c. 9; Natalis Alexander, *de Peccatis* (Migne, *Curs. Theol.*, XI, 707 seqq.; Cathrein, *Phil. mor.*, 134; Tanquerey, I, n. 510.

359. Sins, or capital vices, are so called, not because they are the greatest (for sins against the Holy Spirit and against the theological virtues are graver), but because they have a certain universal influence into all sins, and are, as it were, roots and causes of other vices, not indeed physical or moral, but impulsive and occasional, namely through ignorance, concupiscence, or malice, which they induce in the soul.

Several capital sins, per se, are only venial, but often become the cause of mortal sins; in which case only these mortal sins are necessarily to be declared in confession.

Seven capital sins are fittingly numbered, namely: pride, avarice, gluttony, lust, envy, anger, sloth. For the will, when it departs from right order, either seeks what is not to be sought, or flees what

is not to be fled. Now: 1. If we seek what is not to be sought, that apparent good either is within us, namely one's own excellence, and pride affects this; or it is outside us, namely goods or riches, and avarice covets these; or it is below us, namely the delectable for the conservation of the individual, that is, food, and gluttony seeks this; or the delectable for the conservation of the species, that is, venereal things, and lust seeks these. 2. But if the will flees what is not to be fled, this can happen in a threefold way, namely: either the good of another embitters the soul, in which case envy is born; or the resistance of another irritates it, and then anger arises; or labor terrifies it, and thence sloth proceeds (St. Bonav., l. c.).

1. On Pride

360. DEFINITION. Pride is the inordinate appetite of one's own excellence.

It is called 1. appetite, that is, desire and love of complacency; 2. inordinate: in this defect of due order, three grades are distinguished: the first, by which someone wishes to stand out beyond measure among equals; the second, by which someone despises equals or inferiors; the third, by which someone on account of his own excellence despises superiors; 3. of one's own excellence, not another's. Whence if a mother excessively seeks the excellence of her daughter without respect to herself, it is not properly pride, but another vice akin to pride.

Note. Pride is sometimes not numbered among the capital vices, because in the order of intention it is the beginning of all vices.

DIVISION. Pride is perfect or imperfect.

1. Perfect, or consummated, when someone seeks so to excel that he does not wish to be subject to God, to Superiors, and to their laws. 2. Imperfect, when, due subjection being preserved, someone rests in excessive estimation and complacency of himself (V, 65).
2. PRINCIPLES. I. Perfect pride is a mortal sin, and indeed from its whole genus. The reason is because it is directly and absolutely repugnant to charity toward God, who is contemned through pride. Whence the Apostle says (Rom. 1:32), concerning the proud and haughty: Those who do such things are worthy of death (cf. St. Thom., 2.2, q. 162, a. 6).
- II. Imperfect pride is from its genus venial. The reason is because to raise oneself beyond what is just, without contempt of God and others, is not a grave disorder. "Nevertheless it would be grave if it were done with notable contempt of others, by taking complacency from the abasement of others" (V, 65).

The DAUGHTERS of pride are three:

1. PRESUMPTION, which is the appetite of undertaking something beyond one's powers. It is commonly only a venial sin; nevertheless it becomes mortal if it brings harm to a third party.
2. AMBITION, which is the inordinate appetite of dignity and honor not due, or greater than due. It also is per se a venial sin; but it becomes mortal by reason of the means employed, or by reason of harm inflicted upon the neighbor.
3. EMPTY GLORY, namely cupidity of vain glory, whose end is the inordinate manifestation of one's own excellence, whether true or fictitious. And it itself is per se a venial sin; often it becomes mortal per accidens, as was said concerning ambition.

Now through EMPTY GLORY one sins in a twofold way:

1. "DIRECTLY, and this: a) either through words, and it is boasting, which is venial per se; b) or through deeds, which, if they are true and have something of admiration, is called invention of novelties; it is mortal if it notably corrupts youth or morals. But if the deeds are false, it is hypocrisy, for example, if someone does something good so that he may seem good, although he is not; which of itself is venial, unless it is with injury or contempt of God and neighbor."
2. INDIRECTLY, insofar as someone does not wish to be less than another. This happens in a fourfold way: a) Through the intellect, and it is pertinacity. b) Through the will, and it is discord. c) Through words, and it is contention. d) Through deeds, and it is disobedience.

"To these three daughters of pride there corresponds (through defect of magnanimity) pusillanimity." See the Holy Doctor, V, 65-67.

Pride also generates curiosity, ingratitude, human respects, rash judgment, etc., concerning which the matter will be spoken of in its own place.

The REMEDIES of pride are: consideration of one's own infirmity, of the vanity of human glory, and of the humility of Christ; then acts of humility, both external and especially internal; finally assiduous prayer (*Selva*, P. II, inst. 6).

2. On Avarice

362. DEFINITION. Avarice is the inordinate appetite of temporal goods, which are also usually called goods of fortune.

Avarice is the first vice in the order of execution. The disorder of this vice does not consist in the actual abundance of things, but in the immoderation of affection by which someone does not refer them to a due and honest end, say, to providing for the family and helping the neighbor. This is clear from the things said by St. Thom., 2.2, q. 118, a. 1.

363. PRINCIPLE. Avarice is sin from its genus venial. The reason is because it indeed imports excess, but in a thing indifferent and per se lawful, as riches are. For the rest, per se it is opposed only to liberality, which does not oblige under grave sin. It is said per se, because per accidens it can be opposed to justice and charity. Sometimes avarice also grows to such a degree that on account of it man does not hesitate to transgress divine laws; then it becomes mortal (V, 68). Hence it is said (Ecclus. 10:9): Nothing is more wicked than the covetous man. And (1 Cor. 6:10): Neither thieves, nor the covetous shall possess the kingdom of God.

Note. To avarice is opposed prodigality, which consists in defect of preserving and excess of spending. "It is from its genus venial, lighter than avarice, because it recedes less from the virtue of liberality." Nevertheless it can become mortal if grave evils follow from it: for example, if by this you render yourself unable to pay debts; if you reduce your own people to poverty; if by too costly banquets and delights you introduce into the city a moral necessity that others, by exceeding their powers, do the same; if from this, deservedly, scandal and harm of the poor are born; if you squander goods bound to pious causes, etc. (ibid., 3).

The DAUGHTERS of avarice are: 1. Disquiet of mind, by which one is drawn away from due offices through excessive love of riches; 2. hardening of heart, or mercilessness; 3. violence; 4. perfidy; 5. betrayal (V, 69).

The REMEDIES of avarice, besides prayer, are: 1. Meditation both of the loftiness of heavenly things and the vanity of earthly things; and of the example of Christ the Lord; and of the baseness, unhappiness, and dangers of this vice; and of death, which will despoil us of all earthly things. 2. The giving of alms, visitation of the miserable, and, in the loss of goods, conformity to the divine will.

3. On Gluttony

364. DEFINITION. Gluttony is the inordinate appetite of food and drink.

It is called inordinate insofar as man takes food and drink not for the support of the body, but on account of pleasure alone (2.2, q. 141, a. 6). Cf. n. 308, q. 1. Nevertheless it is lawful to use delight for taking food, for the health of the body.

Gluttony is opposed to abstinence, and is committed in five ways: 1. if you eat before the time; 2. if things too exquisite; 3. if more than is just; 4. if voraciously; 5. if things too exquisitely prepared (V, n. XLIV, and 73).

365. PRINCIPLE. Gluttony from its genus is a venial sin. The reason is because it is excess in a thing per se lawful; and none of the aforesaid five modes is precisely repugnant to charity toward God or neighbor.

"Meanwhile it is judged mortal from accident, and from excessive disorder, in these cases: 1. If someone on account of gluttony violates the fasts of the Church. 2. If someone from gluttony becomes notably unfit for functions to which he is bound under mortal sin. 3. If someone very gravely harms his health, adverting this; otherwise if only lightly, as for example, if one having fever increases the illness by a drink of water. 4. If banquets and drinking bouts become continual, so that the belly is had for God. 5. If someone drinks to perfect drunkenness (concerning which in the Fifth Precept). 6. If someone, from mere gluttony, feeds on human flesh or blood; both because this is repugnant to piety owed to the dead, and because it is contrary to the instinct of nature abhorring it. But he will have to be excused if it happens from cause, for example, from extreme hunger in a siege: in which case, however, you will not be bound to preserve life thus" (V, 73, 4).

The DAUGHTERS of gluttony are numbered as five by St. Gregory (*Moral.*, l. 31, c. 45, n. 88): 1. dullness of mind; 2. inept joy; 3. foolish speech; 4. buffoonery; which from their genus are venial; 5. incontinence: Be not drunk with wine, wherein is lust (Eph. 5:18).

REMEDIES: 1. To beware the incitements of gluttony, and not to mingle oneself with gluttonous persons. 2. To grow accustomed to common foods, sometimes to fast, or at least at table to subtract something from one's own pleasure. 3. To meditate on the examples of Christ thirsting on the cross, and the miseries which gluttony brings with itself. 4. To pray to God before approaching the table.

366. IT IS ASKED. What is CRAPULA and what kind of sin is it?

Resp. Strictly so called, it is excess in food, even unto vomiting.

Concerning it St. Alphonsus teaches: "To eat or drink even unto vomiting is probably only venial from its genus; unless scandal or notable harm to health is present, as Holzmann, the Salmanticenses, etc., commonly say. But those who voluntarily vomit what they have taken, so that they may eat or drink again, are scarcely excused from mortal sin; for this seems to involve great deformity. Thus probably (against Busenbaum) Holzmann and Wigandt" (V, 73, 2).

4. On Lust

367. "Lust is the inordinate appetite of venereal things. The use of these by its nature has been instituted for the conservation of the human race, which is a great good of men and an external [good] of God; accordingly, he who abuses it wounds God and men" (V, 71).

PRINCIPLE. Direct lust is a mortal sin from its whole genus. See the Sixth Precept.

"The DAUGHTERS of lust, which for the most part follow it, are eight: four on the part of the intellect, and four on the part of the will." Thus St. Thom., 2.2, q. 153, a. 5. Cf. n. 377.

Therefore on the part of the INTELLECT the daughters of lust are: 1. blindness of mind; 2. precipitation; 3. inconsideration; 4. inconstancy. These four become mortal when the ultimate end is placed in the creature, or a grave precept is neglected.

On the part of the WILL: 1. love of self; 2. hatred of God; 3. affection for the present age; 4. horror of the future age. These four are per se mortal, unless from imperfection of act they become venial (V, 71).

The REMEDIES of lust are: 1. Flight from occasions and causes, that is, flight from idleness, from readings of depraved books and those which they call novels, from familiarity with persons of diverse sex, etc.; 2. continual prayer (Matt. 17:20); 3. frequent confession, and indeed with the same confessor; for the more the state of the sick person is known, the more aptly can the remedy be applied; likewise frequent and devout reception of the Sacred Eucharist, by which the bread of Angels is eaten, and wine springing forth virgins is drunk; 4. memory of the last things; 5. constant cult and frequent invocation of the Blessed Virgin Mary conceived without stain; 6. custody of the senses, chiefly of the eyes: "let your eyes, even if they are cast upon someone, be fixed on no one" (St. Aug., Ep., 19); 7. mortification of the flesh: "for lust is fed by banquets, nourished by delights, kindled by wine, inflamed by drunkenness" (Scavini, l. I, n. 803).

5. On Envy

368. DEFINITION. Envy is sadness concerning another's good, insofar as that is diminutive of one's own excellence. To it is recalled joy concerning another's evil, insofar as that is reputed good to us.

PRINCIPLE. Envy is, from its genus, a mortal sin. The reason is because it is directly opposed to charity, whose proper thing is to rejoice concerning the good of the neighbor, and to grieve concerning his evil as our own. Wherefore the Apostle places the sin of envy in the genus of those things which exclude from the kingdom of God (Gal. 5:21). Yet often envy is a light sin, either on account of smallness of matter, or on account of imperfection of act (V, 72).

369. Hence you will deduce: 1. If someone is saddened concerning the goods of the neighbor because he is his enemy, it is hatred, not envy.

370. If he is saddened concerning the goods of a prodigal dissipating them, or of a miser basely storing them up, it is just indignation, not envy.

3. If he is saddened concerning the temporal goods of a sinner, because he is unworthy of them, it is inordinate zeal; since all things happen according to the decrees of divine Providence, which we ought to adore.

4. If he is saddened concerning another's good, for example, concerning obtained power, not because it is a good to him, but because thence he fears harm to himself or to another, it is just fear, which per se is not sin, unless it is inordinate or immoderate.

5. If he is saddened concerning another's good, not because he possesses the good, but because it is lacking to himself, in such a way, however, that he by no means desires the other to be deprived of it, it is emulation; which, if it is concerning an honest good, is praiseworthy; but if concerning temporal things, it is sometimes venial, say, if the good is disproportionate to the one grieving, such as it would be if a rustic grieved that he was not king.
6. If he grieves that another equal to himself should grow in excellence, and apprehends the very increase of excellence as evil to himself, it is envy properly so called; for an envious man is said as if not seeing, because he cannot see the goods of another without sadness. Thus ambitious persons, the pusillanimous, women, the old with respect to the young, and whoever have with difficulty obtained what others easily attain, are accustomed to sin (V, 72; *Vera Sposa*, c. 12, § 1, n. 9).

The DAUGHTERS of envy likewise from their genus are mortal, and are numbered as four, namely: 1. hatred; 2. detraction; 3. joy in the evils of the neighbor; 4. whispering, which is evil speech concerning the neighbor, for taking away his friendship with others (cf. n. 1192 seqq., 1195 seq.).

The chief REMEDY: the exercise of charity toward the neighbor.

6. On Anger

370. DEFINITION. Anger, not insofar as it is a passion but insofar as it is a vice, is called the inordinate appetite of vengeance. The habit of anger is irascibility.

It is called inordinate; because to seek or take vengeance for evil in an ordered way, that is, with due moderation and order, is not sin, but an act of right reason and virtue.

Thus Christ with anger cast the sellers out of the temple. Thus a judge exercises an act of virtue by taking vengeance on the accused; a father on a delinquent son; a master on a servant. Therefore anger is without vice whenever someone is angry so that reason may more strongly execute justice. Indeed, many sin by defect of due anger.

But the disorder of anger can happen in two ways: 1. On the part of the object, as if you seek unjust vengeance, namely if a legitimate cause is not present, or if the anger is greater than is fitting, or finally if it is exercised privately, when it ought to be exercised publicly through a judge. 2. On the part of the mode, say, if someone is too ardently angry interiorly, or manifests signs of anger too much exteriorly.

371. PRINCIPLES. I. Anger, inordinate on the part of the object, is sin from its genus mortal. For it is directly opposed to charity, and also to justice. Whence (Gal. 5:20, 21) anger is said to exclude from the kingdom of heaven.

II. Anger, inordinate only on the part of the mode, is sin from its genus venial. For it is excess in a lawful thing. Nevertheless it can become mortal per accidens, as if blasphemy, cursing, or scandal is added.

But the movements of anger under the influence of passion are often sudden, and therefore imperfectly deliberate, or even indeliberate; from which heading anger (of either kind) frequently is venial, or no sin (V, 79, 80).

The DAUGHTERS of anger are: 1. in the heart, indignation and swelling of mind; 2. in the mouth, clamor, blasphemy, contumely, cursing; 3. in work, quarrel, fight, seditions, wounds. See St. Alph., V, 80-83.

Concerning these, the discourse will return either in the Fifth or in the Eighth Precept.

REMEDIES: Consideration of the evils of anger, of the meekness of Christ; prayer, especially in the movement of anger.

7. On Sloth

372. DEFINITION. Sloth, in general, sounds the same as idleness or sluggishness, and is torpor of soul in the exercise of the virtues, on account of the labor joined to it. Sloth, strictly taken, is sadness and weariness concerning divine friendship, because it must be preserved through laborious exercises of the virtues; and thus it does not care for that friendship (V, 84).

PRINCIPLES. I. Sloth, taken in the broad sense, is sin per se venial, but disposing proximately to mortal sin. For the tepid man is a burden to God, not otherwise than food soon to be rejected by vomiting is to man, according to that saying (Apoc. 3:16): But because thou art tepid, I shall begin to vomit thee out of my mouth; and that saying of St. Augustine (ap. St. Alph., *Selva*, P. I, c. 5, n. 9): "God is accustomed to desert the negligent."

But sloth is per accidens a mortal sin when a precept obliging under grave sin is omitted, for example, the hearing of Mass on a feast day, the recitation of the breviary, etc.; but it constitutes one sin with the omission itself (n. 322, q. 2, *Hinc*, b). Cf. *Ami du Cl.*, 1898, p. 1084, where the matter concerns the law of labor.

- II. Sloth, accepted in the strict sense, is sin from its genus mortal. The reason: it is plainly repugnant to the charity of God, since through it divine friendship and eternal beatitude are little esteemed. Hence that saying (1 Cor. 7:10): The sadness of the world works death (cf. V, 84, 2).

The DAUGHTERS of sloth, according to Blessed Gregory (*Moral.*, l. 8, c. 5-6), are the following:

1. Malice, or hatred of spiritual goods; 2. rancor, by which those who exhort to spiritual things are a source of loathing; 3. pusillanimity toward all spiritual goods, fleeing them as arduous; 4. despair concerning salvation; 5. torpor, when good things are done not with due fervor; 6. wandering of mind, by which someone in the exercise of spiritual things wanders about illicit things. This is mortal sin if the mind voluntarily adheres to gravely illicit things, or is drawn back from attention required under grave sin, for example, in celebrating Mass; otherwise it is venial (cf. n. 549, 2).

The REMEDIES of sloth are: frequent confession, pious readings and meditations, and especially spiritual Exercises to be made in total retreat.

Chapter VI

On the Danger of Sinning

St. Alphonsus, V, 63; VI, 452-453; *H. Ap.*, tr. III, n. 69 and tr. ult. n. 2; Croix, l. V, n. 257; Aertnys, I, 232; VI, 299, 300; Lehmkuhl, II, n. 617; Berardi, *Prax. Conf.; de Recidivis et Occas.*; Gury-Ferreres, II, n. 628; Konings, n. 1429; *Instr. past. Eystettensis*, ed. V, n. 331; Card. G. Van Rossum, *Commentarius de Judicio Sacramentali*, a. 2-3.

373. DEFINITION. Danger is the likelihood of an imminent evil. Therefore the danger of sin can be called everything which disposes or impels to sin, for example, grave temptation, a depraved habit, an external occasion.

DIVISION. The danger of sin can be:

1. By reason of cause, intrinsic or extrinsic. It is intrinsic if it proceeds from an internal cause, for example, from a bad disposition of the subject; extrinsic, if it proceeds from an external cause, for example, from a circumstance enticing to sin.
2. By reason of conjunction with a fall, proximate or remote. It is proximate if it is frequently joined with sin, or if the fall is very probable; "then," as St. Alphonsus says (*H. Ap.*, tr. III, n. 69), "although the fall is uncertain, nevertheless the danger is certain"; in other words, the causal connection with sin is morally certain, although the event of sin is probable or uncertain, because concerning free contingents more cannot be had. It is remote if it rarely draws sin with itself, or if the fall is little probable. Each is estimated either from things commonly happening, or from the peculiar circumstances in which the subject is placed (cf. n. 357, 2).

The PROXIMATE danger is such either per se or per accidens. It is proximate PER SE, or absolutely, if frequently from its very nature it induces into sin, namely in such a way that men constituted in it commonly sin for the most part. It is proximate PER ACCIDENS or respectively, if it belongs to it, according to the various condition of men, with respect to one person to have, and with respect to another not to have, a frequent connection with sin. Now this connection is judged to be had if someone constituted in it either has already fallen frequently, or prudently ought to fear lest on account of his known frailty he is going to fall (VI, 452; *H. Ap.*, tr. ult., n. 2).

374. PRINCIPLES. I. Freely to offer oneself to the proximate danger of sinning, or voluntarily to remain in it, is never lawful. This is gathered from Scripture (Ecclus. 3:27): He who loves danger will perish in it. And the reason is: 1. because he who loves, or who, with no necessity compelling, wills the cause of some evil, by that very fact is judged to will the evil which is joined with it; 2. because any law, just as it forbids the violation of itself, so also forbids that which of itself induces to this violation. Therefore he who freely undergoes danger of this kind sins both against charity toward himself and against the virtue to the danger of whose wounding he exposes himself, although in reality the wounding does not follow. And in confession the species of the sin whose danger was induced must be explained.

Nor does it stand in the way to say that in danger, even proximate, the fall is not certain but only probable, and non-fall is equally probable. For it is answered that in that case, although the fall is uncertain, nevertheless the danger of the fall is certain, since it is constituted in the very probability of the fall. Now, if it is wrong to use a probable opinion, without

just cause, with danger of another's harm, spiritual or temporal (as is certain among all), how much more where danger threatens one's own soul (V, 13; VI, 453; *H. Ap.*, tr. III, n. 69). Cf. n. 83.

375. II. From a just cause, it is lawful to offer oneself to the proximate danger of sin, and to remain in it; provided that the necessary cautions are interposed, by which the fall is averted. "The reason is because a danger proximate of itself then becomes remote, both by reason of the circumstance of necessity and by reason at the same time of the preventative means which the person proposes (as he is bound) to employ, namely by diligently turning the mind away from base delectation or another passion; and besides, by fortifying himself with pious thoughts, prayers, and frequency of the sacraments. These means indeed, although they do not suffice for excusing where just cause is lacking, because God does not help those rashly exposing themselves to danger; nevertheless he well furnishes his help to him who from just cause does not leave the occasion, since in that case he remains in that occasion not from affection to sin, but from a certain necessity" (V, 63 p. med.).

Hence it is inferred: "1. Surgeons are excused if they expose themselves to danger in treating women, although at times in the past they have already fallen on account of such an occasion; so pastors who in receiving confessions have experienced the same misery; so also others are excused who cannot leave their own office, say of courtier, soldier, innkeeper, or merchant, without grave detriment ... But otherwise it must be said of simple confessors who have several times fallen in hearing confessions: because these are bound to abstain from such exercise, if they can without grave detriment of reputation or faculties" (ibid.).

2. In the extreme necessity of the neighbor, for example, if an infant is certainly going to die without Baptism, not only can you, but you are bound to succor him with a danger of sinning per se probable; because then necessity causes the danger to become remote; whence if you can, you are bound. "Nevertheless the continuator of Tournely with Sylvius says that if the danger is such that the fall is more probable, then in no way can you or ought you expose yourself to it; because each one ought to regard his own salvation more than that of others. But to this it could be answered that in such a case of extreme necessity, provided the fall is not morally certain, although it is more probable, you are bound to fortify yourself more strongly with prayers and pious works, and then to trust concerning a greater help of God: for then it would reasonably be hoped that God will increase help where greater necessity urges" (II, 26; VI, 453).
3. When the danger of formally sinning is so proximate that the fall is foreseen with moral certitude, it must absolutely be avoided, nor does any cause then excuse; because none can be proportionate to danger of this kind, since the supreme law is the salvation of the soul. Hence that saying of the Lord Savior: If thy right eye scandalizes thee, pluck it out and cast it from thee (Matt. 5:29).

4. Questions. QUAER. 1. Whether we are bound to avoid a LIGHT and remote danger of sinning?

Resp. Distinguish. 1. If the danger is so light and remote that it can be equated to the mere possibility of sinning, we are not bound to avoid it; otherwise, says the Apostle (1 Cor. 5:10), you would have had to go out of this world. And the reason is because a danger of this kind, properly and morally speaking, is not a danger; and he who judged otherwise would act rashly and imprudently, as the scrupulous do, who often increase danger through their vain fears.

2. If the danger is light in this sense, that on account of a special reason there is had a slight probability of sinning mortally, we are bound to avoid it under venial sin, unless some necessity of acting excuses. And the reason is because, just cause lacking, to approach such danger without due caution is not without some rashness and disorder. Fault can become mortal if, with the danger increasing, the probability of sinning becomes grave (III, 484; Berardi, *de Recid. et Occas.*, n. 6).

QUAER. 2. Whether he committed two sins who exposed himself to danger of sinning, and then consented into the thing itself?

Resp. Distinguish. 1. If the danger to which he exposed himself was light and remote, and afterwards he consented to grave sin, he certainly committed two sins: one, namely, and this light, by positing the cause; but the other, and this grave, by positing the effect. The reason is because the second sin must be ascribed more to a new determination of the will than to the cause previously posited.

2. But if the danger to which he exposed himself was proximate, that is, if he posited a cause gravely influencing, and then, the same depraved influence persevering, came into the effect, he does not seem to have committed two sins, nor to be bound to confess the cause separately from the completed work. For the first consent persevered in the effect, that is, in the influence of the cause, and was of the same species and of the same gravity as the very consummation of the sin. But otherwise it must be said if the danger is judged to have ceased for some time, or at

least to have been removed through an act of the will. Otherwise also, if someone approached the danger through acts distinct in malice, for example, through base touches, and then, with concupiscence increasing, had fallen into something worse (cf. n. 328, Reg. 3, I).

Scholium

On Temptations

377. TEMPTATION, taken generally, is an incitement to sin proposed to our will, either by the demon, or by the world, or by our own concupiscence.

Now: 1. The demon for the most part tempts by moving our fantasy and our sensitive appetite. 2. The world tempts us either through fears which it casts into souls, or through the enticements of the senses. 3. Concupiscence finally tempts by drawing the consent of the will to illicit things. It is threefold: concupiscence of the flesh, concupiscence of the eyes, and pride of life (1 John 2:16).

The movements of concupiscence are PASSIONS. These cloud reason and entice the will, both through distraction; and through the contrariety of inclination which the inferior part induces; and finally through a certain bodily alteration, from which reason is in some way bound, lest it freely go forth into act (1.2, q. 77, a. 1 and 2).

378. God permits temptations chiefly on account of the following reasons: 1. Temptations give man knowledge of himself, and teach him both how much he ought to distrust himself and how much he ought to trust in God; 2. they render him more fervent in the service of God; 3. they induce into love of the heavenly Fatherland, where there are no snares, nor struggles; 4. they cause virtues to put down deeper roots; 5. they increase merits and future glory; 6. they instruct man not only for himself, but also for others, etc. (St. Greg., *Moral.*, l. 23, c. 27; St. Bernard, *Serm.* 64, in *Cant.*; St. Alph., *Vera Sposa*, c. 13, § 3).

The REMEDIES against temptations are: 1. Watchfulness; whence Christ the Lord: What I say to you, I say to all: watch (Mark 13:37). 2. Flight from idleness; whence St. Jerome: "Let the devil always find you occupied." 3. Prayer: and this is the most powerful means by which victory can be obtained. Whence in temptation let no one trust himself, but let him immediately have recourse to the most powerful names of Jesus and Mary, invoke the holy Guardian Angel, sign himself with the cross, etc., nor cease to pray until the danger is removed. 4. Thought concerning the Passion of Jesus Christ, or concerning the punishments of hell, or concerning death, etc., or concerning the torment of remorse which the soul suffers after the sin has been perpetrated, or also concerning the fruit going to come to us through resistance. 5. A fervent act of love toward God, with the purpose of undergoing death rather than sinning (cf. n. 322 and 367, etc., Remedies).

Note. In temptations against faith and chastity, it is expedient not to resist the temptation by acts directly opposed to it, but to divert the mind to other things, to despise the tempter, and rather to elicit acts of love, confidence, and contrition (cf. n. 800). If temptations continue to molest, it is expedient (ordinarily speaking) to open them to the moderator of conscience, because the devil, entirely dark, fears the light. No one is more insolent than a robber so long as he lies hidden; and no one more timid than he when he has been manifested; such is the devil, says St. Gregory (ap. Scavini, t. 1, 718).

See several things apud St. Alphonsus, *Homo Ap.*, App. II, § 2, where motives or remedies are suggested against various temptations, especially for the dying; *Regol. di vita comp.*, n. IX; *Pratica di amar G. C.*, c. ult. and elsewhere.

Treatise V

On Virtues

Proemium

On the Notion of Virtue

379. DEFINITION. Virtue, in a broad sense, is taken for any perfection whatsoever, especially for that which consists in the power or faculty of operating. In the stricter sense, virtue is defined by St. Augustine (*de lib. Arb.*, l. 2, c. 19, n. 50): "a good quality of mind, by which one lives rightly, which no one uses badly." And by others commonly: a habit perfecting the rational power, and inclining it to good operation.

It is called 1. Habit, that is, a quality or stable disposition, differing both from power and from act, inclining the power to act, and rendering it able for it.

Whence good acts which do not proceed from the habit of virtue are not, in the strict sense, acts of virtue, although it is usual for the name of that virtue to be imposed on acts of this kind, from whose formal motive they are elicited.

2. Perfecting the rational power. Under the name of rational power here come also the powers of the sensitive soul, according as they operate from the command of reason (St. Thom., 1.2, q. 50, a. 3).
3. Inclining to good operation. For virtue is not only a dispositive habit, as health is, but also and chiefly an operative one, essentially inclining the power to acting well and perfectly.

Thus virtue is distinguished both from habitual grace, which immediately affects the essence of the soul, giving it supernatural being; and from those habits which sometimes have themselves toward good, sometimes toward evil, for example, from opinions, which have themselves toward true and false (1.2, q. 55, a. 4).

From these things gather: a) Perfect virtue renders man victor over himself and unconquered toward all things; or, as St. Bernard speaks (in Cant., serm. 85), it is vigor of soul forcing and directing all things to reason.

- b) The more perfect virtue is, the more easily it restrains the movements of the passions; whence the arduousness of restraining passions denotes the imperfection of virtue more than its perfection. The greatness of virtue is to be measured more according to the notion of good than according to the notion of the difficult (2.2, q. 123, a. 12, ad 2).

380. DIVISION. Virtues are distinguished in many ways:

381. By reason of object, some are divine or theological: these have God as their immediate object, as the author of grace and glory; others are human: these have for their immediate object the good which can be attained by human reason (1.2, q. 62, a. 1).
382. By reason of subject, human virtues are divided into intellectual and moral. Intellectual virtues perfect the intellect in the knowledge of truth. They are four in number, namely: understanding, science, wisdom, and art. Moral virtues perfect the will in pursuit of the good. Four likewise are numbered, namely: prudence (which also belongs to the intellectual virtues, because it pursues the honest good under the aspect of truth), justice, fortitude, and temperance. All the rest are referred to these four (cf. n. 390).
383. By reason of efficient cause, virtues are either infused, which are produced immediately by God in the soul, as faith, hope, charity; or acquired, which are obtained by the powers of nature through frequentation of acts, as temperance, etc.

But some infused virtues are called such per se, which namely can be had from God alone; others per accidens, which, although they can be prepared by human effort, nevertheless sometimes by a special gift of God are infused into the soul. But a virtue of this kind does not differ in species from an acquired one (Polman, *Brev. Theol.*, 2.2, n. 20).

4. By reason of perfection, some virtues are formed by charity, others unformed. Virtue formed by charity is that which is joined with habitual charity. Virtue is called unformed when it is in a subject destitute of charity. Nevertheless it is true virtue, although not perfect, for example, faith, hope in sinners.
5. By reason of grade, virtues are common or heroic. Common is said of virtue which operates in an ordinary or common way. Heroic, which operates expeditely, promptly, delectably, and with abnegation of oneself, above the common mode of operating, that is, impelling to an act befitting a superior nature (St. Thom., 1.2, q. 54, a. 3, and 3, q. 7, a. 2, ad 2; Bened. XIV, *de Beatif.*, l. 3, c. 21, n. 10 and 11).

Besides virtues, there are given in the just soul certain other habits, which are called GIFTS OF THE HOLY SPIRIT. These are infused habits by which man is well disposed to receiving and executing divine inspiration promptly (St. Thom., 1.2, q. 68, a. 1 and 2). See Muller, *Theol. mor.*, I, § 120.

With these things premised concerning the notion of virtue, we shall briefly treat: 1. of certain properties of virtues; 2. of the specific distinction of virtues; 3. of the acquisition of virtues and their loss.

Chapter I

On the Properties of Virtues

St. Thomas, 1.2, q. 55 seqq.; 2.2, q. 47; St. Alphonsus, in ascetical works throughout, especially *Vera Sposa, Prat. d'amar* G. C.; Lessius, *de Jure et Just.*; Schiffini, *de Virt. infusis*, disp. 1; Mazzella, on the same matter; Muller, *Theol. mor.*, I, § 104 seqq., where many useful things.

The properties of virtues which it helps to weigh here are: mediocrity, connection, and order; concerning these in two articles.

Article I

On the Mediocrity of Virtues

381. Virtue is said to consist in mediocrity, or in the mean, insofar as it is placed between excess and defect. Hence that common saying: Virtue is in the middle; and: The blessed have held the mean.

One must distinguish the mean of the thing, which namely is determined from the nature of the thing, and consequently is one and invariable; and the mean of reason, which reason determines by prudent estimation, the circumstances of place, time, and person being attended to.

382. PRINCIPLES. I. The theological virtues do not consist in a mean, per se and on the part of the object. The reason is because one cannot sin against them by excess: since no one can believe God too much, hope in God too much, love him too much.

But per accidens, or by reason of the subject, theological virtues have a mean; because although man cannot be borne into God as much as the notion of the object demands, nevertheless he ought to be borne according to the measure of his condition. Thus, for example, we ought to hope in such a way that our hope is a mean between presumption and desperation (St. Thom., 1.2, q. 64, a. 4).

383. II. All moral virtues consist in a mean. The reason is because these virtues are occupied about a finite good, to be pursued moderately, concerning which it is said (Wis. 11:21): Thou hast disposed all things in measure, and number, and weight: and therefore, just as it is vice to be deficient in the pursuit of this good, so also to exceed. Thus fortitude is between rashness and cowardice: temperance between intemperance and insensibility, etc. (St. Thom., 1. c., a. 1).

Nevertheless justice holds the mean in one way, and the remaining virtues in another.¹⁰⁶ For:

1. JUSTICE ought to attain the mean of the thing, that is, equality according to the thing, so that as much be rendered as is owed. Hence the mean of justice is the same for all, nor can it vary: whence if you owe 100, you ought to render 100; if you render only 99, you wound justice; if you give 101, it will be an act of liberality (cf. n. 398 and 404).
2. The other moral virtues hold only the mean of reason, according to the estimation of prudence, regulating and measuring all things. The reason is because they are occupied about passions, in which the mean cannot be constituted in the same way for all, but in a diverse way according to the quality of persons. Thus, for example, in temperance, what is the mean or right for one will be little or too much for another; and so concerning the other virtues (St. Thom., 1. c., a. 2). Cf. n. 391.

Article II

On the Connection and Order of Virtues

384. I. The connection among the virtues has itself thus:

1. The theological virtues are so connected that charity, in the state of the way, supposes faith and hope, but not conversely. For faith generates hope, and hope charity. But the generating is prior to the generated, and can be without it. Therefore faith can be without hope, and hope and faith without charity.

¹⁰⁶The intellectual virtues also hold the mean of the thing; for the thing is the measure of our intellect. Whence excess in these virtues is according to false affirmation, through which that which is not is said to be; but defect is taken according to false negation, which denies that what is, is. See St. Thomas (1. c., a. 3).

2. Infused moral virtues (likewise the gifts of the Holy Spirit) are connected among themselves insofar as they are rooted in charity; for without charity such habits can neither be acquired, nor increased, nor preserved, as will be seen below (n. 417). But they are not necessarily connected with acquired virtues: because they can exist without these, as is clear in baptized infants; on the contrary, acquired virtues are not immediately lost when the infused virtues are lost (St. Thom., 1.2, q. 65, a. 2).
3. Acquired moral virtues (which can exist without faith, hope, and charity) are not necessarily connected among themselves, if they are imperfect; otherwise, if they are perfect.

The reason for the first is because imperfect virtue is like a movable disposition, which does not furnish a firm faculty of conquering impediments: whence we see many, from natural temperament or even from some custom, to be prompt for works of mercy, who nevertheless are not prompt for works of chastity. The reason for the second is because perfect virtue causes someone, in every circumstance, willingly and without delay to operate the proper acts of that virtue; but there is no one who, destitute of even one virtue, so conducts himself. This can easily be seen, for example, in a woman chaste, but avaricious or fearful; for if an immense sum of money is offered to her, or threats of death are intended, she will not with difficulty suffer detriment of chastity (St. Thom., l. c., a. 1).

385. Note. Nevertheless false is the opinion of the Stoics, who denied that there is any virtue unless it is in the highest degree (St. Thom., 1.2, q. 66, a. 1). Hence: 1. The same virtue, even perfect, can be unequal, or greater and lesser, according to diverse times in the same man. 2. It can be unequal in diverse men. Thus diverse Saints are praised especially for diverse virtues, as Abraham for faith, Moses for meekness, Job for patience; indeed concerning any Confessor the Church sings: There has not been found one like him, who kept the law of the Most High; because each had the prerogative of some virtue (ibid., a. 1, ad 2).

386. II. A twofold order of virtues is distinguished: 1. of perfection or dignity, by reason of object; 2. of generation or acquisition, by reason of subject.

387. In the order OF PERFECTION, in the first place come the theological virtues, by which the human mind is joined to God; then the gifts, which perfect the powers of the soul in relation to the Holy Spirit moving to acts especially extraordinary; afterwards the intellectual virtues, which perfect reason according to itself; lastly the moral virtues, which perfect the will, or the sensitive appetite, in order to reason.

Similarly, among the theological virtues, first in dignity is charity, second hope, third faith. Among the gifts of the Holy Spirit, the first is wisdom, the last fear of God. Among the merely intellectual virtues, in the first place comes wisdom, in the second understanding, in the third science and art. Among the moral virtues, prudence first, justice second (to which religion belongs), fortitude third, temperance fourth.

Nevertheless humility, which renders man well subject to the ordination of reason as to all things, in dignity precedes the other moral virtues, which render man subject to this order as to some special matter; or, it comes immediately after legal justice, which universally executes this ordination made by prudence in reason itself (St. Thom., 2.2, q. 123, a. 12; q. 141, a. 8; q. 161, a. 5).

2. In the order OF GENERATION, moral and intellectual virtues precede, or can precede, theological virtues and the gifts of the Holy Spirit; because by the fact that man has himself well concerning his own reason, he is disposed to this, that he have himself well in order to God.

Likewise, in the exercise of Christian virtues, although the habits of these virtues are infused at the same time, nevertheless according to acts, faith precedes hope, and hope charity: for through faith the intellect apprehends those things which the mind hopes and loves; and from this very fact that man hopes concerning God, he proceeds to love him (cf. n. 1675, 4). See St. Alph., VI, n. 442, obj. 3.

Indeed, love of neighbor, as to act, precedes love of God; and in the same way humility is said to be prior to other virtues, insofar as it removes their chief impediment, that is, pride, which God resists; and it renders man subject and open to receiving the influence of divine grace (2.2, q. 161, a. 5, ad 2).

Chapter II

On the Specific Distinction of Virtues

Toletus, 2.2, q. 18, a. 6; Pesch, *de Virt.*, n. 34; Mazzella, *de Virt.*, p. 17; Tanquerey, *Synopsis*, ed. 3, p. 342; Lehmkuhl, I, n. 843.

387. "Since virtue is ordered to good, where there is a special notion of good," says St. Thomas (2.2, q. 81, a. 4), "there must there be a special virtue."

From this general principle it follows first of all that the theological virtues differ in species from the moral virtues: for by these latter man pursues the honest good proportioned to human nature; by the former, however, the divine good, exceeding the nature of man. But this first distinction is followed, both in the natural order and in the supernatural order, by many other distinctions, which must be weighed individually.

Article I

On the Distinction of Virtues in the Natural Order

388. DEFINITION. Virtues of the natural order are those which are acquired by repeated acts, and are ordered to the natural end, that is, to beatitude proportioned to nature. Some are intellectual, others moral.

Moral virtues are divided into principal or cardinal virtues, by which, namely, as by hinges supporting it, the whole human life is turned; and into adjunct or companion virtues, which flow from the cardinal virtues, or are referred to them.

389. PRINCIPLES. I. There are four cardinal virtues, namely, PRUDENCE, JUSTICE, FORTITUDE, TEMPERANCE. This doctrine rests upon these words of Sacred Scripture: For she teaches sobriety (temperance) and prudence, and justice, and virtue (fortitude), than which there is nothing more useful in life for men (Wis. 8:7).

Now this number of four is had both by reason of the subject and by reason of the object (1.2, q. 61, a. 2).

1. It is had by reason of the subject: for a fourfold subject of virtue is given, namely: the rational by essence, which prudence perfects; and the rational by participation, which is divided into three, that is, into the will, which justice orders; into the concupiscible appetite, which temperance rectifies; and into the irascible appetite, which fortitude rightly disposes.
2. It is also had by reason of the object: for either virtue has for its object the very consideration of reason, namely that it assign measure and mode in every operation, and this is prudence; or it is occupied about operations, which it makes right, and thus it is justice; or it is occupied about passions which impel toward something contrary to reason, so that it may repress them, and thus temperance is had; or it is occupied about passions which draw back from that which reason dictates, so that it may despise them, and thus fortitude obtains.¹⁰⁷
3. II. The other moral virtues can be reduced to the four cardinal virtues. Thus commonly.

They are reduced in a threefold way. For some virtues help a cardinal virtue, so that its act may become perfect; and these are called integral or integrating parts: because without them the virtue cannot be whole, just as a house without foundation, wall, and roof would not be whole. Others are subjected to a cardinal virtue as species to a genus, and therefore are called subjective parts of the same virtue: because a genus is predicated of a species as of a subject. Others finally serve a cardinal virtue in certain secondary acts or matters, and in these observe the mode which that virtue observes in principal matters; and therefore they are named potential parts, as if not having the whole power of the principal virtue (2.2, q. 48, a. 1).

Now concerning the several virtues.

§ 1. On Prudence and the Virtues Contained Under It

391. NOTION. Prudence is defined by the Angelic Doctor (2.2, q. 47, a. 2): right reason of things to be done. By others: "A habit of the practical intellect, for rightly determining, through an act of command, what is to be done in any particular case."

Hence: 1. The material object of prudence is particular human actions. But the formal object is the mean of reason, between defect and excess; or practical rectitude, as a form to be impressed upon each action (cf. n. 383, 2).

2. Prudence, by reason of its subject, is an intellectual virtue; for it resides in the intellect, so that it may decide what we ought to pursue and from what we ought to decline. But by reason of its object it is moral; for it is occupied

¹⁰⁷Note, the cardinal virtues perfectly heal the four wounds of nature, namely the ignorance of the intellect, the malice of the will, the weakness of the irascible appetite, and the ardor of the concupiscible appetite (Schoupe, *Dogm.*, tr. 18, n. 297). - St. Bernard (in Cant., serm. 49, n. 5): "Discretion is not so much a virtue as a certain moderator and charioteer of the virtues.... Take this away, and virtue will be vice."

about morals, all of which it directs, and over which it commands, although it does not elicit them: whence it is an essentially practical virtue (St. Thom., I. c., a. 5).

3. Acts of prudence. There are three acts or functions of prudence: 1. Prudence consults well, that is, it diligently and without precipitation investigates and deliberates what means, what circumstances, are necessary, so that the work may be done honestly and virtuously. 2. Prudence judges rightly, that is, after diligent deliberation, it firmly concludes and pronounces what means, among those sought and found, are good and fitting. 3. Prudence commands efficaciously, namely by moving the moral virtues to the execution of those things which have been diligently deliberated and firmly judged (Bened. XIV, *de Beatif.*, l. 3, c. 24, n. 5).

But these acts, so that they may be done duly, must be exercised with solicitude and fitting diligence; and if someone has applied this, and has done what he could, although he speculatively errs, nevertheless the judgment will be prudent, and he will not sin (cf. n. 21). See Billuart, *de Prud.*, Diss. 1, a. 2.

From these things you will gather: 1. Prudence, in its functions, depends much upon the moral virtues: partly because the virtues restrain the passions, which disturb reason in the consideration of the honest, and display a delectable good; partly because they so dispose the subject that the honest work exhibits itself as most congruous to him, as drink to the thirsty, food to the hungry. "For each one judges according as he is affected." And: "As each one is, so does the end appear to him."

2. Perfect prudence cannot exist except in upright men, who have the affection rightly disposed in every matter of virtue. For these alone, in any business that occurs, are able to judge rightly. But in men who are not upright, or who are given to some vice, only imperfect prudence can exist: namely that maimed prudence by which they only consult and judge well toward some particular good, but not toward the end of the whole of human life; or by which, although they consult and judge well as regards this whole end, they by no means bring to effect the things which they consult and judge (cf. Lessius, *de Prud.*, c. 1, n. 30-35).
3. Parts of prudence. I. The integrating parts, or endowments of perfect prudence, are eight, namely:
 4. Memory, or recollection of past things; for past things teach us; whence that worn saying: "Believe Robert, the experienced one."
 2. Understanding, that is, full knowledge of the state of the matter here and now to be done, and of the moral principles which ought to concur for judging prudently.
 3. Providence, which, as if seeing from afar, considers the end of the work and future events.
 4. Shrewdness, that is, sudden and ready discovery of a fitting means.
 5. Docility, or promptness of soul for taking hold of others' counsels.
 6. Reason, that is, a certain promptness in reasoning and gathering one thing from another.
 7. Circumspection, or attention to all the circumstances of the work, lest some requisite be lacking.
 8. Caution, or care of avoiding evils and impediments by which, from without, the work of virtue could be vitiated or impeded (St. Thom., 2.2, q. 48 and 49).
5. II. The subjective parts, that is, the species of prudence, are numbered as two, namely:
 6. Personal or monastic prudence, through which man rules himself; this alone can absolutely and simply be called prudence.
 2. Governing prudence, by which man rules others. This is manifold, namely domestic, civil, pastoral, military, etc. (2.2, q. 50). It is not simply prudence, because it does not always render him who has it better (2.2, q. 47, a. 11, 12).
7. III. The potential parts of prudence, that is, the companion virtues which prudence uses, are numbered as three:
 8. Eubulia, which is the habit of consulting rightly, that is, of finding good counsel in doubtful matters.
 2. Synesis, or the habit of judging rightly concerning things consulted. Through this, men are called well-sensed.
 3. Gnome, that is, the habit of judging rightly, when there is need, from higher principles, beyond the common rules of things to be done, yet according to the mind of the legislator. The act which corresponds to this in the will is called epikeia (St. Thom., 2.2, q. 51). Cf. n. 173 and n. 403, 3.
9. Vices opposed to prudence. I. Imprudence is opposed to prudence THROUGH DEFECT; under this name commonly come:
 1. Precipitation, by which someone undertakes some work without sufficient deliberation.
 2. Inconsideration, by which judgment concerning means is made without due attention.
 3. Inconstancy of mind, that is, change of opinion on account of no cause or a slight cause.
 4. Negligence, or omission of the diligence required for urging the execution of the matter deliberated (2.2, q. 53 and 54).

What kind of sin, you will ask, is imprudence? - Resp. Imprudence can be taken in three ways: 1. negatively, for the mere lack of prudence; and thus it can be without sin, as is clear in children; 2. privatively, for the lack of due prudence; and in this way it is a general sin, which is found in every theological fault; 3. contrariwise, when the counsels of prudence

are positively spurned and repudiated; and in this way imprudence is a special sin, and indeed mortal, if there is grave contempt of divine rules; otherwise it will be venial.

397. II. Those things which have a likeness with prudence itself are opposed to prudence THROUGH EXCESS, namely:
398. Prudence of the flesh, which is the diligent devising of means for fulfilling the instincts of corrupt nature; and these can regard external goods, or the delectations of the senses, or one's own excellence. This prudence is of itself mortal, according to that saying (Rom. 8:6): The prudence of the flesh is death.

Indeed, moderate solicitude concerning temporal goods is not condemned, but that solicitude which is superfluous and disturbs the soul: because it imports distrust in the providence of God, and is a grave or venial sin according to the gravity of the matter (2.2, q. 55, a. 1).

2. Astuteness (or craftiness, or cunning), which is knowledge and use of depraved means for deceiving, with the intention of attaining what is intended, whether good or evil. Yet properly astuteness is taken in an evil sense (St. Thom., I. c., a. 3).

§ 2. On Justice and the Virtues Annexed to It

398. NOTION. Justice, taken generally, designates the complex of all virtues. For that is called just which equals its measure.

But justice, as a cardinal virtue, is customarily defined: "The constant and perpetual will of giving each one his right." Thus defined, it comprehends all moral virtues which are toward another, that is, toward God or toward one's neighbor (St. Thom., 2.2, q. 57).

The material object of justice is a thing or action in some way owed to another. But the formal object is the notion of debt, or the special honesty which shines forth in rendering to each one his own (Lessius, *de Just.*, I. 2, c. 1).

For true and perfect justice three things are required, namely: 1. that it be altogether toward another; for, since the name of justice imports equality, from its nature justice has this, that it is toward another; for nothing is equal to itself, but to another; 2. that it be occupied about a rigorous debt, that is, about a debt from whose violation not only moral baseness is contracted, as in all those things which are owed from the title of honesty (for example, of gratitude), but a strict obligation of restitution or reparation arises; 3. that it render to equality, that is, as much as is owed (2.2, q. 58, a. 2).

Between father and son, husband and wife, Creator and creature, there is not justice properly and simply so called in those things, namely, which they owe as son, as father, etc.; because the son, as son, is not considered diverse from the father, but something of the father; similarly the wife is considered one flesh with the husband, etc. It is otherwise if such persons should come together in some contract, as fellow citizens and distinct parties; for then the status of the persons would be something secondary, and their agreement would regard a debt of justice alone. Likewise, if a son should kill his father, he would violate not piety alone, but also justice, because the father, considered as a man, has a right to life, as do the rest.

399. Parts of justice. I. The integral parts are: 1. to do good under the aspect of debt; 2. to decline from evil under the aspect of injury. Whence St. Ambrose (*de Offic.*, I. 1, c. 24, n. 115): "Justice assigns his own to each one, does not claim what is another's."
400. II. The subjective parts, or species of justice, are assigned as three, namely commutative, distributive, and legal justice.

The reason of the division is that there is a threefold respect under which justice gives to another what is his: namely, the respect either of part to part, or of the whole to the part, or of the part to the whole. For the first is established commutative justice, through which a part renders to a fellow part what is his. For the second is placed distributive justice, through which the superior of the community dispenses the common goods according to the merits of individuals. For the third is assigned legal justice, through which all and each give what is owed to the community by reason and force of the laws (St. Alph., III, 486).

1. COMMUTATIVE justice is the virtue inclining a private man to render to another private man his strict right, an absolute equality of the thing to be rendered to the thing accepted being preserved (cf. n. 383). Nevertheless commutative justice can intervene between a private person and the community, but only where the community has itself after the manner of a private man.

It is called commutative, because it is founded chiefly upon various contracts and upon the innumerable exchanges which are accustomed to take place among men. It is also called strict or rigorous, because those three things which are required for perfect justice are present in it, and in it alone (n. 398, 2).

Note. Various species of injuries are opposed to commutative justice, concerning which in the last six precepts of the Decalogue.

2. DISTRIBUTIVE justice is the virtue which inclines the community, or its prince as minister, to distribute rewards, dignities and honors, and also common burdens, according to the proportion of merits or capacities.

This differs specifically from commutative justice, because it has a diverse formal object, namely the debt of the community, as such, to the parts; whence it comes about that it establishes or regards a diverse equality. For commutative justice regards arithmetical equality, such as there is between two equalities, for example ten and ten. But distributive justice looks to geometrical equality or proportion, which consists in the proportion of the thing to be distributed with the dignity and merit, or capacity, of the person to whom it is to be distributed, comparison being made to others to whom right also belongs in the distribution of goods or burdens. It is imperfect justice, because it is not founded upon strict right, but upon a debt of fittingness (2.2, q. 61, a. 2).

Note. Acceptance of persons is opposed to distributive justice; concerning this we shall speak when discussing the offices of the Bishop, prince, judge, etc. If something to be divided equally among several by strict right were divided unequally, for example a common treasury, a public foundation, etc., commutative justice also would be violated.

3. LEGAL, or GENERAL, justice is the virtue which inclines a private person, or a prince, to render all those things which are owed to the community, in order to the common good. It is called legal, because it is occupied about all things established by laws for the common good. It is called general, insofar as it commands and directs the acts of all virtues to the general prosperity of the commonwealth.

Nevertheless it is a special virtue, because it has a special object, namely public right, or the good of the whole, to be procured by the part, namely by the head or by a member. It is true justice, because between the community and citizens there is true equality, while one renders to the other all that he owes him according to the laws. But it falls short of the notion of perfect justice, because it is not perfectly toward another, since this other is something of the whole. Yet it is nobler than the other species of justice, since the common good, which it regards, is superior to the private good; and since the common good must be procured, or at least preserved, in such a way that private good is always subordinated to it.

Note. To legal justice is opposed: materially, every transgression of laws; formally, and as a special sin, contempt of law, or of the common good, whether on the part of private persons, when deliberately they act against it, as, for example, internationalists, socialists; or on the part of the prince, and of other persons set over others, when they neglect the common good which is endangered, or prefer private good to it (Lessius, l. c., l. 2, c. 1, n. 11).

It is asked: What is VINDICATIVE justice?

Resp. It is the virtue inclining the prince or magistrate of the community to punish the guilty according to the laws. The object of this justice is punishment to be done according to merit; the subject is the judge constituted by legitimate authority, to whom alone it belongs to take vengeance concerning delicts.

This justice primarily pertains to legal justice. Yet often it also pertains to commutative justice: both because the judge, from office and on account of salary, is bound to protect and preserve the public good; and because he ought so to punish delicts that he also exact and procure reparation of the damage which has been inflicted upon private persons. Hence not rarely judges, on account of their negligence in punishing, are obligated to restitution, whether toward the community or toward private persons (St. Thom., 2.2, q. 62, a. 7).

401. III. The potential parts, or virtues annexed to justice, are those which indeed regard another, but in some way fall short of the notion of perfect justice. Nine virtues of this kind are numbered, distributed into three classes (2.2, q. 80, a. un.).

The FIRST CLASS comprises those virtues which fall short of the notion of justice for this reason, that the debt which they render to another cannot be rendered to equality. These virtues are: religion, piety, and observance. See the things to be said at n. 530 and 687 seqq.

402. The SECOND CLASS comprises those virtues which fall short of the notion of justice because the debt which they render to another is not indeed required by force of justice, but only from the honesty of virtue; yet it is so required that its omission is a sin. - Of this kind are: truthfulness, gratitude, and vindication.

403. TRUTHFULNESS, or truth, inclines to always saying what is true. To this virtue are recalled: a) FAITH or fidelity in promises; b) SIMPLICITY, by which someone exteriorly exhibits himself in words and deeds as he is interiorly.
404. GRATITUDE inclines to compensating a benefit received. But recompensation is made: a) by affection, through kindly acknowledgment, or estimation, of the benefit received; b) by effect, through opportune giving of thanks and requital of the benefit.¹⁰⁸
405. VINDICATION, or severity, repels force or injury, and whatever is going to harm, by defending or avenging. The special object of this virtue is vengeance, required and to be taken by a legitimate judge; not with the mind of harming, but either from zeal for recovering honor unjustly taken away, or from love of that honesty which shines in the punishment of the malefactor, to whom punishment is owed of itself, just as thanks to a benefactor. See the things said (n. 400) concerning vindicative justice.

Related to vindication is penance, concerning which we shall speak at n. 1644.

403. The THIRD CLASS comprises those virtues which regard a certain debt contributing to greater honesty, and whose omission of itself involves no sin. The virtues of this third class are liberality and affability; to which equity can be numbered, although this is rather referred to legal justice.
404. LIBERALITY moderates the love of money, so that we may freely and promptly expend it for our own usefulness and our neighbor's, and for God's honor. To this is referred MERCY, insofar as it is a moral virtue inclining to relieving another's misery.
405. AFFABILITY (to which friendship, urbanity, and benevolence are referred) renders conversation with one's neighbor pleasing and decent. For man is bound, says St. Thomas (2.2, q. 114, a. 2, ad 2), from the natural debt of honesty, to live pleasantly with others.
406. EQUITY, or epikeia, inclines to acting contrary to the words of the law, when some higher consideration demands it. See the things said at n. 173.
407. Vices opposed to justice. Besides formal injustice, which, either by damaging or by taking away, wounds the goods of man, there are given multiple other vices which are opposed to the potential parts of justice, whether by excess or by defect.

To religion are opposed those things concerning which the first three precepts of the Decalogue treat.

To piety are opposed impiety, cosmopolitanism (defect), and nationalism (excess). Cf. Muller, I. 2, § 34, 40.

To observance are opposed irreverence and disobedience.

Contrary to truthfulness are: lying, simulation, and revelation of a secret.

To gratitude are opposed: indiscreet gratitude (excess) and ingratitude (defect).

Severity not tempered degenerates into cruelty or excessive lenity.

Enemies to liberality are prodigality (excess) (cf. n. 363) and avarice (defect).

Affability is a mean between flattery (excess) and moroseness (defect) or envy.

§ 3. On Fortitude and the Virtues Annexed to It

405. NOTION. Fortitude, taken broadly, is firmness of soul in operating good. Taken strictly, it is a cardinal virtue, confirming the soul of man for duly undertaking or sustaining difficult things, chiefly dangers of death (St. Thom., 2.2, q. 123-140). Cf. Lessius, *de Jur. et Just.*, I. 3.

The material object of fortitude is dangers and labors; but the formal object is the honesty which firm constancy of soul in undertaking or sustaining arduous things contains.

There is a twofold act of fortitude: to undertake and to sustain with firmness of soul. But this latter is the more principal, because (St. Thom., 2.2, q. 123, a. 6) it is more difficult to repress fear than to moderate daring. - To this second act pertains martyrdom, concerning which at n. 1452.

¹⁰⁸St. Bernard, in Ps. 90, serm. 14; St. Bonaventure, *Pharetra*, I. 3, c. 21, have many things concerning gratitude and ingratitude.

406. Parts of fortitude. I. There are no subjective parts or species of fortitude (St. Thom., 2.2, q. 128, a. 1): because this virtue, taken strictly, is occupied about matter contained within narrower limits and entirely specified, namely about dangers of death: and these dangers, although some are greater than others, nevertheless are contained in the same genus.
- II. The integrating parts of fortitude (which can also be called potential, when and insofar as they are extended to less arduous matters) are four, namely: magnanimity, magnificence, patience, and perseverance.
1. MAGNANIMITY is a virtue inclining to great and heroic works in every genus of virtues. To this virtue pertain confidence or trust and security. The difference between security and confidence consists in this, that security imports a certain perfect quiet of soul from fear; but confidence imports a certain strength of hope. - Goudin treats excellently concerning magnanimity, *Philosoph.*, P. III, q. 6, a. 4.
 2. MAGNIFICENCE is a virtue inclining to great works (chiefly to those which pertain to the worship of God) to be completed with great expenses, according to the prescription of right reason. It differs from magnanimity because this latter intends great things in every matter, while magnificence regards only things to be made. St. Thomas (2.2, q. 134, a. 2, ad 3).
 3. PATIENCE is a virtue strengthening the soul in the toleration of afflictions. Through it, the good of reason is preserved against sadness, lest reason succumb to affliction. This virtue is most necessary to man, because in this mortal life evils must be tolerated by him, immense in number and gravity, and because the passion of sadness has much power for impeding the good of reason, according to that saying (2 Cor. 7:10): The sadness of the world works death; and (Eccli. 30:25): Sadness has killed many, and there is no usefulness in it. To patience is joined LONGANIMITY, which is the equanimous toleration of affliction arisen from the delay of a hoped-for good.
 4. PERSEVERANCE is a virtue by which man firmly persists in a good work, notwithstanding annoyances and difficulties which arise from the long duration of the act. Related to it is CONSTANCY, a virtue which bestows so great an immutability in good that man preserves an even mind in all things, and perseveres unchanging against whatever difficulties arise.

Vices opposed to fortitude. To fortitude are opposed rashness (excess), by which someone undertakes arduous things contrary to the prudent dictate of reason, and cowardice (defect), which flees from undertaking what is fitting for repelling evil. Also opposed are fearlessness (excess), which does not fear when it ought, and timidity (defect), which grows afraid inordinately.

Furthermore, considering the potential parts of fortitude, we have the following:

Contrary to magnanimity are: presumption, ambition (excess), and pusillanimity (defect).

To magnificence are opposed: parvificence (defect) and profusion (excess).

To patience are opposed: impatience (excess) and insensibility (defect).

Perseverance is wounded by: pertinacity (excess), inconstancy and softness (defect).

§ 4. On Temperance and the Virtues Annexed to It

407. NOTION. Temperance, taken broadly, is that moderation of soul which pertains to all parts of life, and is common to every virtue. Taken strictly, it is a cardinal virtue which, according to the rule of reason, moderates the appetite in those things which most allure, namely in the delectations of taste and touch (St. Thom., 2.2, q. 150-170). Cf. Lessius, *de Just.*, l. 4.

The material object of temperance is bodily delectations, namely those which are ordered to the preservation either of the individual or of the species, and are perceived from foods, drinks, and venereal things. The formal object is the honest use of the same, or the honesty of moderation which is applied in these, such as is consonant with the dignity of human nature.

The rule or measure of temperance, which reason assigns, is taken according to the necessity of the present life. St. Augustine beautifully expresses this thus (*de Mor. Eccl.*, c. 21): "The temperate man has a rule in the things of this life..., that he love none of them, think none to be sought for its own sake, but use them for the necessity of life and of duties, as much as is enough, with the modesty of one using, not with the affection of one loving." Yet under the name necessity, understand also usefulness or fittingness, according to the condition of the person, state, occupation, etc.

408. Parts of temperance. I. The integral parts which concur for the perfection of temperance are shamefacedness and honesty.
409. Shamefacedness is fear or flight from a base act, and from the confusion arising from it. It is not properly a virtue, but rather a certain passion, yet good and praiseworthy. 2. Honesty is love and pursuit of decorum. Indeed honesty (the state of honor), generally, does not differ from virtue, nor from decorum or moral beauty; nevertheless, honesty and beauty are attributed by a special title to temperance, because it belongs to this virtue to repel altogether that which is most base in man.
410. II. The subjective parts, or species of temperance, are: abstinence and sobriety in the matter of taste; chastity and modesty about venereal things (St. Alph., *Vera Sposa*, c. 8; Lessius, opusc. *Hygiasticon*). Cf. the things to be said at n. 757, 764, and 1218.
411. III. The potential parts of temperance are secondary virtues which imitate this principal virtue in an easier matter. Whence moderation of any inordinate movement is a potential part of temperance.

Virtues of this kind are especially numbered as seven, namely: continence, meekness, clemency, humility, modesty, studiousness, and eutrapelia.

1. CONTINENCE is a virtue which resists movements of concupiscence provoking to intemperance. To contain oneself (2.2, q. 155, a. 1, ad 2) is the same as to hold oneself in oneself, according to reason. Continence differs from temperance as the imperfect and begun differs from the perfect and complete. The temperate man has already overcome the concupiscences of foods, drinks, and venereal things; but the continent man so restrains the same concupiscences, still rebellious, that the superior part of the soul is not conquered.
2. MEEKNESS is a virtue which moderates anger according to the dictate of right reason, namely so that man does not grow angry except when, and as much, and in the way that he ought (St. Alph., *Pratica d'amar G. C.*, c. 6 and 12).
3. CLEMENCY is a virtue mitigating punishments within the limits of right reason; or, it is the lenity of a superior toward an inferior, remitting something from due punishment, as much as justice, the good of discipline, the salvation of the delinquent, and public edification permit.
4. HUMILITY is defined by St. Bernard (*de Grad. hum.*, c. 1, n. 2): "A virtue by which man, by the truest knowledge of himself, becomes vile to himself." And by St. Thomas (2.2, q. 161, a. 1): "A virtue tempering and restraining the soul, lest it tend immoderately to lofty things." A twofold humility is usually distinguished: humility of judgment or cognition, by which we know that we are nothing before God; and humility of affection or of heart, by which we tread underfoot the glory of the world. Wherefore St. Thomas (*ibid.*, a. 6) says: "Humility consists essentially in appetite, according as someone restrains the impulse of his soul, lest he tend inordinately toward great things; but it has its rule in cognition,"

"namely, that someone not judge himself to be above that which he is; and the principle and root of both is reverence which one has toward God." See St. Alph., *Vera Sposa*, c. 11.

Note. HUMILITY pleases God exceedingly; for it is a certain profession of truth, which especially redounds to his honor. But how necessary it is to man for obtaining eternal salvation is gathered from the words of Christ the Lord saying (Matt. 18:3): Unless you become as little children, you shall not enter into the kingdom of heaven. Cf. also *ibid.*, 11:29. Whence St. Augustine (*Ep. ad Dioscorum*) says: "The first virtue is humility; the second, humility; the third, humility; and as often as you would ask, I would say this" (cf. n. 386, 1).

5. MODESTY is defined: A virtue by which someone keeps himself within the mode and limits congruous to him, as regards internal and external movements (2.2, q. 160 and 168). Yet only moderation of externals pertains to modesty strictly so called. It is twofold: a) Modesty OF MOVEMENTS, which arranges the movements of the body, in words and actions, according to the mode of reason. b) Modesty OF CULT, which applies the moderation of reason in exterior arrangement, or in clothing, furniture, banquets, according to the condition of person, time, place, etc. See St. Thom., I. c., q. 169.

This virtue indeed has humble matter, but by right great praise: for the exterior man is the indicator of the interior, nor easily can man in exterior habit act constantly according to the norm of right reason, unless interiorly he has all things well ordered and is furnished with other virtues. But on the contrary, the exercise of modesty also helps much toward acquiring, preserving, and increasing other virtues (Lehmkuhl, I, n. 876).

6. STUDIOUSNESS is a virtue which moderates the appetite of knowing, and study itself, according to right reason. The office of this virtue is: a) to restrain the excessive appetite of knowing; b) to incite to diligently learning matters

fitting to the condition and capacity of each one (St. Alph., *H. Ap.*, VII, 52); c) to refer study and acquired knowledge to the due end, namely to one's own or another's usefulness, and to the glory of God (2.2, q. 166).

7. EUTRAPELIA (modesty in playful things) is a virtue preserving mode and decorum in sayings and deeds instituted for the recreation of the soul (2.2, q. 167). - "I will that at last you spare yourself," says St. Augustine (*de Musica*, l. 2, at the end): "for it pleases that the wise man sometimes relax the attention decently intent on things to be done." Cf. St. Alphonsus, III, n. 178; ed. G., I, p. 483.

Vices opposed to temperance. To temperance are directly opposed: a) by excess, insensibility toward delectable things, such that one refuses to use them even if one ought. Of itself, this is venial, but for some persons (for example, for spouses) it can become mortal; b) by defect, intemperance, by which someone immoderately pants after pleasures, contrary to the rules of reason (2.2, q. 124, a. 4).

To the SUBJECTIVE PARTS, the species of temperance, many vices are opposed, namely: to abstinence, gluttony (cf. n. 364); to sobriety, drunkenness (cf. n. 757); to chastity, lust (cf. n. 767); to modesty, immodesty (cf. n. 769).

To the POTENTIAL PARTS of temperance several vices are opposed, whether by defect or by excess:

To meekness are opposed irascibility (defect) and excessive indulgence (excess).

Clemency holds the mean between cruelty (defect) and lenity (excess). Cf. n. 403, 3.

To humility is opposed inordinate self-abjection (excess), for example, if a father casts himself down beneath a son, and pride (defect), concerning which we have already spoken at n. 360.

To modesty are opposed both courtliness and luxury (defect), and rusticity and neglect of fitting arrangement.

Studiousness holds itself as mean between curiosity (excess) and negligence of studies (defect).

Finally, eutrapelia is equally hostile to moroseness (defect) and to buffoonery (excess), concerning which the Apostle speaks to the Ephesians, 5:4. See n. 2231, concerning games prohibited to a cleric.

Article II

On the Distinction of Virtues in the Supernatural Order

411. The supernatural habits which God infuses into the soul for the attainment of the supernatural end are the following: 1. theological virtues; 2. infused moral virtues; 3. gifts of the Holy Spirit. We shall say a few things concerning each of these habits.

I. The theological virtues are fittingly assigned as three: FAITH, HOPE, CHARITY.

For the theological virtues order man to supernatural beatitude, just as through natural inclination man is ordered to the end connatural to him. Now natural inclination toward the end is exercised, as regards the intellect, through first principles and reasonings known by the light of reason: to these are superadded supernatural, credible principles, concerning which is faith. Natural inclination is exercised besides through the right will, which tends toward the good of reason: this right will is aided and perfected by hope, by which the possible supernatural good is desired; it is also aided and perfected by charity, which impels the will to this, that it be united with the ultimate end and transformed into it. Cf. St. Thom., 1.2, q. 62, a. 3; Bouquillon, *de Virt. theol.* See below the things to be said at n. 420 seqq.

412. II. Besides the theological virtues, there are given moral virtues infused in us by God per se, which are commonly called CHRISTIAN. This is the common opinion with St. Thomas against Scotus. - It is proved from Scripture (Wis. 8:7), where it is said: She teaches sobriety and prudence, and justice, and virtue, etc....; but for God to teach and to infuse something is the same; for God does not teach as man does, by only proposing objects, but by infusing light. Reason supports it: for the theological virtues order us into the supernatural end according to a certain beginning only, that is, as regards God himself immediately, but not as regards creatures: and therefore it is necessary that through other infused virtues the soul be perfected concerning other things, yet in order to God.¹⁰⁹

Let it be noted. 1. Infused moral virtues differ from acquired virtues not in matter, but in species. They do not indeed differ in matter, as they commonly teach with St. Thomas (1.2, q. 63, a. 4); but they altogether differ in species, that

¹⁰⁹Cf. 1.2, q. 62, a. 1; q. 63, a. 2, ad 2; q. 65, a. 3; Ripalda, *de Ente supern.*, t. 2, l. 6, disp. 119-121 (ed. Paris, 1871); Scaramelli, *Dirett. mistic.*, tr. 1, c. 5; and the Dogmaticians.

is, as regards the formal object, or mode of operating. The formal object of acquired virtues is natural honesty, which befits man insofar as he is man and citizen of human society; but the formal object of infused virtues is a more sublime or supernatural honesty, which befits us insofar as we are Christians, that is, imitators of Christ, citizens of the Saints, and members of the household of God. Thus, for example, acquired temperance is established in food and drink for this reason, that the body may be well and the act of reason not be impeded; but according to the rule of the evangelical law, temperance is required so that man may chastise his body and bring it into servitude. And so concerning the others. To these add abnegation of oneself, love of poverty, and similar virtues, which are known and ruled only by the light of faith.

2. They differ further in facility of operating; for infused virtues of themselves indeed give the power (and probably also a certain facility) of operating supernaturally; yet they do not of themselves remove the impediment which comes from concupiscence, or from evil custom; whence "it ought not seem wonderful to anyone" (says the Roman Catechism, *de Baptism.*, n. 52), "if, although we have been furnished and adorned with so great an abundance of virtues, nevertheless not without great difficulty and labor do we begin, or at least complete, pious and honest actions." But acquired virtues, which are obtained by repeated acts, at the same time remove or diminish the impediment; for they are not exercised without struggle, nor except by acts contrary to concupiscence. Therefore, infused virtue confers the very faculty of producing supernatural acts, with a certain intrinsic facility scarcely perceptible; but acquired virtue does not give the faculty, which is already had, but provides facility, whether intrinsic or extrinsic, of placing good acts in the natural order (Mazzella, *de Virt. infus.*, n. 58 seqq.).
3. III. There are present besides, in all the justified, the seven gifts of the Holy Spirit, or supernatural habits specifically distinct from the virtues. These are, according to the prophet Isaiah (11:2), the gift of wisdom, understanding, counsel, fortitude, knowledge, piety, and fear of the Lord.

We said 1. The seven gifts of the Holy Spirit are present in all the justified; this is the common opinion, resting upon many reasons, from which it suffices to bring forward this one: it befits the justified person to be easily movable by the Holy Spirit in those things which are either necessary or fitting for his own salvation. But the seven gifts of the Holy Spirit are ordered to these things (St. Francis de Sales, *Theotim.*, P. II, c. 14).

2. They are habits specifically distinct from the virtues. For the gifts dispose man so that he is promptly movable by God, beyond the common and ordinary rules of operating; but the virtues (whether acquired or infused) only dispose him so that he is movable by reason, both natural and disposed by supernatural perfection (1.2, q. 68, a. 1). The gifts of the Holy Spirit therefore are a certain summit and complement of the supernatural state to which we are raised by the grace of God (Mazzella, n. 528).

Note. From these virtues and gifts proceed the more excellent acts, which are called the fruits of the Holy Spirit and the beatitudes. On these see the Dogmatic and Ascetical writers (cf. St. Thom., in Matt. 7:20, and in Galat. 5:22).

Chapter III

On the Acquisition and Loss of Virtues

St. Alphonsus, *Vera Sposa*, I, c. IV; Contenson, *Theol. mentis et cord.* (ed. Vives), II, p. 453 seq.; Alvarez de Paz, II vol., *de Adept. virt.*, I, 3, p. 593; Dosda, *Union a Dieu*, I vol., p. 405.

Since man is a mutable being, he can both fall back and advance; indeed he never remains in the same state (Job 14:2). Hence it comes about that virtues, in this life, can be acquired or not acquired, increased or diminished, lost or preserved.

§ 1. On the Acquisition of Virtues

414. One mode belongs to acquiring natural virtues, another to acquiring supernatural virtues.

I. Virtues of the natural order are acquired through frequency of acts. For in any man there are certain seeds of virtues (namely the principles of the natural law in the intellect, and inclination to honest good in the will), by force of which man is able to exercise many honest acts. But from repeated acts of this kind, the habit of virtue is obtained, insofar, namely, as from reason there is derived into the will and into the sensitive appetite a certain habitual impression, inclining and facilitating the repetition of the same acts.¹¹⁰ As can be seen in the hand, which, because it writes as moved by the intellect and the will, with art directing it, is therefore receptive of a certain impression derived from those principles moving it, by which it becomes better fitted for writing (1.2, q. 51, a. 2).

¹¹⁰Hence St. Thomas (*Quodl.*, disp. *de Virt.*, q. 1, a. 4, ad 3) says: "Reason is the root and cause of all virtues."

But let it be noted that such is the law of nature that moral virtue is acquired only by frequency of acts and assiduous care; by difference from science, which can be begotten from one act, of itself. The reason is that the intellective power is determined to one thing, that is, to truth, as soon as this is demonstrated; while the appetitive power, as free, has itself toward various things, nor does it tend to a determinate good except according as it is moved into it by reason. But when reason inclines the appetitive power to some one thing, thence there is generated in the appetite a certain stable disposition, so that he who earlier was bent toward pursuing good in an ordered way only extrinsically and with difficulty, after that new disposition has been contracted, tends into it easily, pleasantly, and strongly. And this is the sign of a generated habit (St. Thom., *Quodl. de Virt.*, q. 1, a. 9, ad 11; Goudin, *Philosoph.*, P. III, q. 5).

415. II. Supernatural virtues and the gifts of the Holy Spirit are produced in us, with sanctifying grace, through divine infusion. The cause ought to be proportioned to the effect; therefore divine virtue is caused by a divine act, for example in the reception of some sacrament. It is namely a virtue which God works in us without us, that is, without us effecting it, although not without us adult persons consenting (1.2, q. 55, a. 4, ad 6; q. 63, a. 3; q. 68, a. 4).

We said with sanctifying grace: this is certain from Trent, Sess. 6, c. 7, as regards the theological virtues; but the same reason holds for the gifts and other infused virtues.

Note. The INCREASE of virtues is made by the same cause as their acquisition or production. Hence, through daily exercise of good works, acquired virtues grow, insofar as their acts are exercised more readily and more intensely; infused virtues are indirectly increased, because into a subject better disposed, placing a lesser obstacle and meriting more, God infuses greater grace. But as often as the just, whether by receiving the sacraments or by placing supernatural works, grow in the justice received, so often in them the infused virtues receive an intrinsic increase (Mazzella, *de Virt. infus.*, n. 150).

We said: by placing supernatural works, that is, works honest in themselves, which proceed from a supernatural motive (of faith, hope, etc.), and which are referred to God by at least a virtual intention. For these three things, as St. Alphonsus teaches with Suarez and Silvius, suffice for the increase of merit, and consequently for the increase of grace and of the infused virtues.¹¹¹

§ 2. On the Diminution and Loss of Virtues

416. Acquired virtues are diminished and lost in one way; infused virtues in another way.

I. ACQUIRED virtues are diminished and lost: 1. Directly, through the repetition of contrary acts; for by these there is gradually generated a vicious habit, which, when fully formed, excludes the habit of acquired virtue.

Thus, for example, to recite the Hours without devotion contributes to the diminution, and finally to the total corruption, of the habit of devotion, and likewise to the generation of the contrary habit, namely of lack of devotion. Yet one act, even if intense, is not enough to take away an acquired virtue; for vice, and it alone, excludes moral virtue, just as sin excludes the act of virtue; but ordinarily speaking, vice is not generated by one vicious act, but by several (cf. n. 316).

2. Indirectly, through cessation of the proper act. For when someone does not use the habit of virtue, it is necessary that many passions and operations arise beyond the mode of virtue, from the inclination of the sensitive appetite and of other things which move from without. St. Thomas (1.2, q. 53, a. 2).
3. II. INFUSED virtues are not diminished directly and intrinsically, because they are indivisible like grace; but they are diminished indirectly, or dispositively, both through cessation of their proper act and through contrary acts venially sinful. The reason is that, when the fervor of charity and of the infused virtues decreases, the helps of grace are diminished on the part of God; and on the part of

the other part, vicious habits are gradually formed; by this twofold reason man is disposed toward mortal sin, by which grace and infused virtues are lost (cf. n. 344).

But virtues of this kind are lost: 1. directly through gravely contrary acts; thus, for example, through infidelity faith is lost; through desperation, hope; through any mortal sin whatsoever, charity, etc.; 2. indirectly through the loss of another virtue which is their foundation and principle (2.2, q. 24, a. 10).

¹¹¹See Council of Trent, Sess. 6, c. 10; the Holy Doctor's dogmatic works on Trent, Sess. 6, Prooem. n. 88 (ed. Walter, I, p. 514); Suarez, *de div. Grat.*, l. 12, c. 10, n. 15 seqq.; Silvius, in St. Thom., 1.2ae, q. 114, a. 4, q. 2, Concl. 2. - Cf. the things which we said at n. 308, where mention was made of another opinion.

Thus, for example, faith having been lost through infidelity, hope also is lost; charity having been lost, all infused virtues which are rooted in charity are lost. Hence, one sinning mortally, for example against chastity, loses all infused moral virtues and all gifts of the Holy Spirit. Yet in such a sinner there remain faith and hope, and also the acquired moral virtues which are not excluded by opposed vices; but they are called unformed, as we noted above (n. 380, 4). But when grace is superinfused, they are formed anew, on account of charity joined to them, and they become acceptable to God.

It is asked: Whether virtues remain after this life?

Resp. 1. In the damned no virtue remains: there remains only the inclination of nature toward good, which generates a vehement and perpetual remorse of conscience.

2. In the blessed those virtues remain which import no imperfection repugnant to their state. Whence charity and the gifts of the Holy Spirit remain; likewise, intellectual and moral virtues as to the formal element, that is, as to everything which is of reason in them. But faith and hope are emptied out. Hope is totally taken away in the Fatherland, even as to genus, which is tendency toward an absent and future good. Faith is totally taken away in number and species, but not in genus, which is knowledge of truth (1.2, q. 67, a. 5).
3. In the souls of Purgatory remain faith, hope, charity, the gifts of the Holy Spirit, and intellectual virtues; likewise moral virtues, as to some and far more acts than in the blessed, for example fortitude, as to the act of patience (ibid., a. 1).

Supplement to Part I

SUPPLEMENT

DISPOSITIONS

OF THE CODE OF CANON LAW PROMULGATED BY THE AUTHORITY OF POPE BENE- DICT XV

WHICH PERTAIN TO MORAL THEOLOGY

PROEMIUM.

In this Supplement, according to the order of the numbers and tractates of the *Moral Institutions*, there are found those things which in them are confirmed by the new Code, and those things which must be changed from it. This arrangement of the matter by way of an appendix, although it has against it the fact that it is not inserted into the book itself, nevertheless bears before itself no lesser utilities, especially from this, that thus it may be seen clearly and immediately what things are retained in all moral theology, and what things truly are abolished or renewed, after the Code has begun to have binding force, i.e., after the nineteenth day of the month of May of the year 1918. From it there is thus at once understood the distinction between the old and the new discipline, which helps not a little toward understanding better the new dispositions of law and toward retaining them more easily in memory. It is supposed that anyone possesses a volume of the new Code, which indeed not only most greatly befits a cleric and especially a student of Sacred Theology, but is also plainly necessary for him for observing ecclesiastical laws.

N. B. - Lest the word *is confirmed* (*confirm.*) recur too much, it will be omitted whenever it would have to be applied to several immediately following numbers.

PART I.

TRACTATE I. - On Conscience.

For solving doubts the canons 6 § 4, 15, 23 contribute. Cf. also canons 19, 50, 85, 1748 §§ 1-2.

TRACTATE II. - On Laws.

109, 5° is confirmed by can. 8 § 1, by which also n. 137 is confirmed. - 138 can. 197. - 139 can. 218 § 1. - 140 can. 7 and can. 244 §§ 1-2, from which it is also clear that Decrees of the S. R. C., in order to obtain the force of law, need the approbation of the Supreme Pontiff. The exception as regards comprehensive declarations is confirmed by can. 17 § 2. The competence of the Sacred Congregations is described in can. 247-257. From can. 241, while the Apostolic See is vacant, the Sacred College of Cardinals and the Roman Curia have no other power than that which is defined in the constitution of Pius X *Vacante Sede Apostolica*, i.e., only the ordinary faculties remain, and they cannot use them in

cases of graver moment except by commission of the Sacred College. As regards those things which, while the See is full, they cannot expedite except after having had word with the Most Holy One or by force of special faculties granted by the Roman Pontiff, they have no power. - 141 is confirmed by can. 329 § 1 and 334, but especially by can. 335. From these and from can. 362 it is clear that those things which the author has under note 2° can no longer be sustained; therefore it must be said that a bishop enjoys truly legislative power by law, even outside a Synod and without the Chapter having been heard. See also can. 427 and 423, according to which, in places where there is not yet a Cathedral Chapter, diocesan consultors are to be instituted. Note 3° is confirmed by can. 271 and 274 n. 8; Note 4° can. 335 § 1, but from can. 2221 it is clear that they can fortify common laws with a sanction. - 142 is confirmed by can. 228 § 1 and 291; Note 1° can. 222 § 1; 2° can. 291. - 143 can. 431 § 5 and 435. - 144 can. 198 § 1, 323 § 1 and 294. As regards pastors, it is confirmed by can. 83. - 145-146 These henceforth pertain to the history of canon law, because after the day of Pentecost of the year 1918 nothing any longer is in force except the Code of Canon Law of Benedict XV. - 147 sqq.: concerning civil power, discourse is made in the Code only indirectly, e.g., § 2 can. 1553.

156 is confirmed by can. 8 § 1. - 159 1° can. 335. - 160 2° can. 9; Qu. 2 is solved from the same can. 9: "they exert their force only after three months have been completed from the day which is affixed to the number of the *Acta* (Ap. Sedis)." - 164 is confirmed in some measure by can. 30. - 165 can. 336 § 1. - 167 1° can. 17 § 2. - 168 can. 17 § 1. - 169 can. 17 §§ 2 and 3; 4° must be corrected, because even a restrictive explanation needs promulgation from can. 17 § 2; Note 2° the S. Congr. of Rites now enjoys no special power from can. 244 §§ 1-2; 3° as regards the S. Congr. of the Council, in can. 250

nothing further is said concerning the exclusive right of interpreting the Council of Trent. - 170 is confirmed by can. 29. - 171 III The rules of interpretation are had in can. 18, 19. In this matter, according to can. 18, first attention is to be paid to the proper signification of the words from the text and context; if this has remained doubtful, recourse is to be had to parallel places of the Code, to the end and circumstances of the law, and to the mind of the legislator. To 3° of the author: what is odious, what favorable, is discerned from can. 19 and 50. - 172 is confirmed in some measure by can. 20.

185, 187, 188 are confirmed by can. 11, 15 and can. 1679-1683. - 192 can. 21. - 194 can. 12. - 195 II can. 12 and 854 (853), can. 906. III can. 12, can. 2230. The impubescent are no longer punished by the censures which are had in the Note, from can. 2230, and because mention of them is lacking in can. 2342 n. 1. From can. 12 the question is solved, so that children, even those having the use of reason, before the seventh year are not held by laws, unless something else is expressly provided by law. - 196 is confirmed by can. 2201 §§ 3-4 and can. 2229 § 3 n. 2. - 197 can. 12. - 198 can. 12, 13 § 1, 87, 2314 and 1254, according to which all are bound by the laws of abstinence and fast, therefore even heretics, of themselves. - 199 is confirmed by can. 616. See also can. 619, 620, 621. As regards feast days cf. can. 1244 § 2 and 1245 § 3. - 200-201 are confirmed by can. 120, 121, 122 as regards personal immunity; can. 1172-1178 as regards local immunity a), and can. 1179 as regards the same b). Concerning real immunity discourse is not made in the Code. - 203 I is confirmed by can. 91, except that an inhabitant is he who has domicile in a place, a stranger he who has quasi-domicile in a place; - II The notion of domicile has been changed from this, that henceforth diocesan domicile can be had from can. 92 § 1 and 3. That it may be lost is confirmed by can. 95. The Note is confirmed by can. 93 § 1. Observe, however, that a wife legitimately separated from her husband, from § 2, can acquire a domicile; - III is confirmed by can. 92 § 2; "habitation" is to be understood in the sense of "commoration." Note 1° is confirmed by can. 1097 § 1 n. 2; 2° the question about two quasi-domiciles seems solved from can. 95, and from can. 93 § 1 it is clear that children acquire only the domicile

of their parents. - 204 is confirmed by can. 13 § 1, 14 § 1 n. 2 and 3, and 14 § 2. - 205 Strangers according to the sense of the Code are those who obtain quasi-domicile, and these are held by general and particular laws from can. 13 §§ 1-2; therefore the things which the author has are confirmed. - 206 is confirmed as regards pilgrims; but as regards wanderers it must be changed: from can. 14 § 2 "wanderers are obliged by both general and particular laws which are in force in the place in which they are." - 208 is confirmed by can. 24. - 213 as regards the paschal precept, can. 859 §§ 1 and 4.

219 is confirmed implicitly by can. 16 and 2202 § 1. - 220 is confirmed by can. 2202 § 2. Exc. 2° can. 2229 §§ 1, 2, 3 n. 1, and § 4. - 222 can. 2205 § 1. - 226 From can. 900 § 3: "Reservation lacks all force outside the territory of the one reserving, even if the penitent has departed from it only in order to obtain absolution." - 227, 229, 230 are confirmed by can. 80. Quasi-ordinary, can. 81. Example, can. 1245 § 1. - 231 is confirmed by can. 81 and 82. - 232 can. 195 §§ 2-5. - 233 can. 207; let another reason of cessation be added: "when the final cause of delegation ceases." Faculties are not suspended by the death of the Bishop from can. 66 § 2, by which also the Note is confirmed; this also is confirmed by can. 73, 207 § 1 and can. 61. - 234 II Bishops and local Ordinaries from can. 82, also confirmed from can. 336 § 1, can. 291 § 2; but c) must be changed: in these laws Ordinaries cannot dispense from can. 82; 2° a) is confirmed by can. 15, also implicitly as regards other laws; b) it is given to them by law for feasts, abstinence and fast by can. 1245 §§ 1-3, for vows by can. 1313 n. 1. Concerning the divine office, as regards dispensation nothing is in the Code; c) is confirmed by can. 81. Note as regards Vicars General, from can. 66 § 2 the same faculties which belong to the Bishop belong to them, and from can. 368 § 2 they can execute Pontifical rescripts. III Pastors have nothing from can. 83, except as regards feasts, abstinences and fasts from can. 1245 § 1. - 235 as regards pilgrims, in can. 1245 the faculty of dispensing from fast, abstinence, and the celebration of feasts is expressly granted to local Ordinaries and pastors. - 236, 1°-2° subreption from can. 42 § 1 does not obstruct validity, provided those things have been expressed which, according to the style of the Curia, are to be expressed for validity; nor obreption from § 2, provided either the sole cause proposed, or from several proposed at least one motive cause, is true; nor from § 3, if several graces are granted by a rescript, does the defect of obreption or subreption in one part of the rescript invalidate another; 3° from can. 37 a rescript can be obtained for another, even besides (i.e., not against) his assent; and although he himself can not use the grace conceded by the rescript, nevertheless the rescript has force before his acceptance, unless something else appears from the opposed clauses. - 239 is confirmed by can. 84 § 1, 2° can. 85. Note. Do not extend can. 2238. - 240 can. 84 § 1. - 241 can. 84 § 2. - 242 can. 85 and 50; 2° Now then in note 1 is confirmed by can. 45. - 243 2° can. 74. - 245 I can. 86. - 246 II is confirmed by can. 60, 71; the Question is confirmed by can. 73, 86 and 61. - 247 is confirmed by can. 72, 86. - 248 is confirmed implicitly, as regards all laws, by can. 15.

249 For the division of privileges cf. can. 66 § 1, 74, 75, 79, 70. By can. 75 local privileges are added to the 2nd division. - 250 is confirmed by can. 63 § 1, but for religious institutes from can. 613 § 1 every communication in privileges has been taken away. See also can. 64 and 65. - 251 is confirmed by can. 69. - 252 can. 51. - 253 2°, can. 67, 68, 50. - 254 can. 70; 1°, can. 74, 75, 77; 2°, can. 72; 3°, can. 76; 5°, can. 71 and 60. - 258 can. 21. - 259-260 can. 22 and 23. - 262 can. 26; 7°, can. 28; 8° now 40 years are required from can. 27 § 1 and can. 28. - 263 is confirmed by can. 27 §§ 1 and 2, can. 28. - 264 can. 25; 2° can. 27 by the word "prescribed." - 266 1° the doctrine of the author is implicitly confirmed by can. 27 § 2; 2° by the

same can. Examples, e.g., can. 1408. - 267 and 268 are confirmed by can. 30. See also can. 5 as regards customs hitherto in force.

TRACTATE III. - On Human Acts.

The things which are had in num. 271, 282, 283, 285, 286, 288, 291 are confirmed respectively by can. 2200 § 1, 2205 §§ 1, 2, 3, can. 2202 § 1, 2203 § 3 and 2206.

TRACTATES IV AND V. - On Sins and Virtues.

Nothing to be observed.